

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CODA DEVELOPMENT s.r.o. CODA INNOVATIONS s.r.o., et al.,

Plaintiffs,

Case No. 5:15CV1572

Akron, Ohio

Friday, September 16, 2022

8:45 a.m.

THE GOODYEAR TIRE & RUBBER
COMPANY, et al.,

Defendants.

TRANSCRIPT OF TRIAL
VOLUME 10, PAGES 2654 THROUGH 2789
BEFORE THE HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE

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23 Proceedings recorded by mechanical stenography; transcript
24 produced by computer-aided transcription.
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Friday, September 16, 2022

(Outside the presence of the jury, 8:44 a.m.)

3 THE COURT: We're going to handle some
4 preliminary matters this morning before we bring the jury in
08:45:03 5 and I instruct them on the law and we hear your closing
6 arguments.

7 The fist thing, how did our exhibit crew do? Are we
8 complete.

9 Mr. Evans, do you want to report since you're trying
08:45:24 10 to admit exhibits, on behalf of the defendants?

11 MR. EVANS: Yes, Your Honor, we conferred with
12 plaintiffs and we submitted the plaintiffs this morning.

13 THE COURT: Submitted the papers.

14 MR. EVANS: To Ms. Callahan who I believe took
08:45:39 15 them back to chambers.

16 THE COURT: So we have an agreed list.

17 MR. EVANS: Yes, Your Honor.

18 THE COURT: No issues.

19 MR. EVANS: No, Your Honor.

08:46:04 20 MS. QUADRINO: No, Your Honor.

24 MS. QUADRINO: Right.

08:46:17 25 THE COURT: So the Court will, since there is an

1 agreement and no issues to bring before the Court, I will
2 admit the exhibits for both parties that have been offered.

3 And I can see a problem here that I want to address
4 because I want to make sure we have complete lists.

08:46:57 5 So I'm going to step down, I'm going to ask Ms.
6 Quadrino and Mr. Evans to head my way, because I want to
7 make sure we do this correctly.

8 So this is your -- this list of 14 pages is the
9 plaintiff's original list.

08:47:13 10 MS. QUADRINO: Yes, Your Honor.

11 THE COURT: And then this list of three pages is
12 the defendant's list, and any that plaintiff may have wanted
13 as well.

14 MS. QUADRINO: Correct.

08:47:23 15 THE COURT: After the defendants list.

16 MR. EVANS: That's correct.

17 THE COURT: Okay. I just want to make sure that
18 they were going to have two --

08:47:30 19 MS. QUADRINO: And each sides reflects the
evidence that was brought there during that case in chief --

21 THE COURT: Sure. And I understand that. I
22 thought we were going to compile it under one.

23 MS. QUADRINO: I do believe there is an effort
24 underway to get a joint list if that's helpful, but for the
08:47:52 25 record's sake, since you already have a list from the

1 plaintiff's side --

2 THE COURT: That's fine. I just wanted to be
3 clear. I'm completely fine.

4 So these two, then these two lists are the exhibits
08:48:03 5 that have been offered, and I hereby admit all exhibits. I
6 appreciate everyone's cooperation in working through this
7 cooperatively and collegially, I'm sure.

8 All right. The next issue to discuss with jury
9 instructions and verdict forms.

08:48:34 10 Again, we met for hours last evening in a jury charge
11 conference and again this morning. Through the evening and
12 morning I was receiving e-mails from the attorneys. And I
13 really appreciate everyone's thoughtful input.

14 So I have now given you a fourth draft of the jury
08:49:04 15 instructions with the latest red line changes and also the
16 verdict forms.

17 I do -- there is one addition I need to make on the
18 verdict form. I realized I had forgotten to do that
19 relative to the damages.

08:49:20 20 Are you proposing that we do that on number 5? Oh,
21 no. I guess it is there. I'm sorry. It's already there.

22 MS. QUADRINO: It is.

23 THE COURT: I'm sorry.

24 MS. QUADRINO: The correction to the verdict form
08:49:43 25 would only be in connection with a reasonable royalty

1 instruction.

2 THE COURT: Sure.

3 MS. QUADRINO: That he was the only thing.

4 THE COURT: So based upon -- let me put it this
08:49:53 5 way, first of all. Based upon the Court's rulings -- and
6 I'll put them all on the record -- but are there any further
7 modifications to make to, first of all, the jury
8 instructions?

9 MS. QUADRINO: No, Your Honor.

08:50:07 10 MR. CASTANIAS: No, Your Honor.

11 THE COURT: All right. Based upon the Court's
12 rulings that we will place on the record, any further
13 modifications to the verdict forms?

14 MR. CASTANIAS: No, Your Honor.

08:50:20 15 MS. QUADRINO: No, Your Honor.

16 THE COURT: And by the way, we do have page
17 numbers on them now except for the first page, of course.

18 Okay. So I'm going to then have these printed up now.
19 I'll allow the parties to make a record relative to the jury
08:50:44 20 instructions.

21 And, again, I want to thank the attorneys with whom I
22 worked on these instructions for their thoughtful comments
23 and thorough presentation of the issues and the law and
24 their suggestions.

08:51:07 25 So with that, Ms. Quadrino, you're up first.

1 MS. QUADRINO: Thank you, Your Honor.

2 Just two points. We note that the Court has included
3 an instruction on the duty of confidentiality, which is
4 largely derived from the nondisclosure agreement present in
08:51:44 5 this case.

6 Coda goes not object to this instruction. We just
7 wish to note for the record that this is an issue on which
8 defendants have filed a motion for summary judgment. There
9 were legal arguments presented to the Court based on the
08:51:56 10 terms of that nondisclosure agreement, and by our agreeing
11 to including an instruction on this in the jury
12 instructions, we are not waiving the legal positions that we
13 took previously.

14 THE COURT: Very well.

08:52:06 15 MS. QUADRINO: Secondly, based on our prior
16 discussions, we understand that Your Honor is likely not to
17 include an instruction on reasonable royalty damages.

18 Coda objects to the exclusion of an instruction on an
19 alternative form of damages based on a reasonable royalty.
08:52:21 20 Pursuant to the Ohio Uniform Trade Secrets Act, that
21 provides in lieu of damages, measured by any other methods,
22 the damages caused by misappropriation may be measured by
23 imposition of liability for a reasonable royalty that is
24 equitable under the circumstances, considering the loss to
08:52:38 25 the complainant, the benefit to the misappropriator or both

1 for the misappropriator's unauthorized disclosure or use of
2 a trade secret. That's Revised Code 1333.63.

3 Coda is entitled to present alternative theories of
4 damages to the jury. This Court confirms plaintiff's
08:52:57 5 ability to present this theory of damages in its ruling
6 denying defendant's motion in limine seeking to exclude Coda
7 from presenting alternative theory of damages to the jury
8 and specifically finding that, quote, "Shirley Webster's
9 expert report satisfies the notice requirement with respect
08:53:11 10 to a damages theory based on reasonable royalties, no matter
11 that she may have characterized those as actual losses."
12 That's the hearing transcript from August 17, page 10, line
13 14 to 17.

14 Ample evidence has been presented to the jury in the
08:53:25 15 form of documents and fact and expert witness testimony to
16 enable the jury to calculate reasonable royalty damages.
17 And we object to excluding that instruction at this time.

18 THE COURT: Thank you, Ms. Quadrino.

19 And those are the only two objections then?

08:53:43 20 MS. QUADRINO: Yes.

21 THE COURT: Mr. Castanias.

22 MR. CASTANIAS: Thank you, Your Honor. Yes.

23 The Goodyear defendants object to giving the damages
24 question to the jury, the punitive damages question to the
08:54:00 25 jury. Pardon me.

1 Ohio Revised Code 1333.63(B) says, "The Court shall
2 award punitive damages up to treble and actual damages."
3 And the framers of the Uniform Trade Secrets Act, which was
4 adopted by Ohio, explicitly said it in their notes to this
08:54:21 5 draft that this was to be the allocution of responsibilities
6 between Judge and jury, and this is to be the same
7 allocution responsibilities as under 35, United States Code,
8 Section 284, the Patent Acts Enhanced Damages Provision.

9 I think that's adequate to set forth the grounds for
08:54:36 10 our objection. And the way that our -- the instruction
11 and --

12 THE COURT: On alternative damages.

13 MR. CASTANIAS: -- jury form would read, so I'm
14 not going to belabor the point.

08:54:49 15 THE COURT: Very well. And I just want to
16 indicate relative to that decision by the Court, since I now
17 think the exchange is complete on that one, is that I was
18 persuaded by 2004 Southern District Ohio decision, Newark
19 versus Sauter, and until the Federal Circuit, the Supreme
08:55:17 20 Court would indicate otherwise, I'm going to follow that
21 law.

22 All right. Your next point.

23 MR. CASTANIAS: That's all from the Goodyear
24 defendants.

08:55:25 25 THE COURT: Okay. So just stay in place both of

1 you.

2 Relative to the damage alternative of reasonable
3 royalty, I would indicated that Ms. Webster prepared a very
4 extensive report. In that report, to be sure, she insisted
08:55:53 5 that it was a reasonable -- I'm sorry, that her damage
6 calculation was based upon actual loss.

7 I heard the parties' arguments during the motion in
8 limine, questioned whether it was actual loss, even wrote my
9 opinion in that fashion.

08:56:16 10 When I heard the entirety of the evidence, it was just
11 reaffirmed in my mind that truly the plaintiffs, being the
12 master of their case, and the way they wanted to present
13 their evidence, presented actual loss. It was err for me to
14 say that was that alternative theory. It might have been
08:56:37 15 actual loss that had to do with licensing, but it was an
16 actual loss calculation.

17 The evidence in trial primarily addressed that, and
18 the record is clear as to what it is, so I'm not going to go
19 through all the evidence. We're too close to the time when
08:56:54 20 we need to bring the jurors into the courtroom.

21 But I think it would be inappropriate and there would
22 be no guidance for the jury here as to how should they
23 decide to go with a reasonable royalty calculation, how that
24 would ever be calculated, given the lack of evidence
08:57:21 25 relative to some of that portion of that damage calculation

1 in the Court's estimation.

2 In any event, the plaintiffs, through Ms. Webster's
3 report, made it very clear that they were pursuing an actual
4 damage claim. I'm at this date finally taking them at their
08:57:51 5 word because those how the evidence was presented even at
6 trial.

7 And so that's the basis in summary for the Court's
8 ruling.

9 The two calculations are different. And I think it
08:58:05 10 would be very confusing for the jury to hear -- or to
11 receive a jury instruction that if you think the actual loss
12 calculation, which is based on an ideal, absolutely ideal
13 situation where there would be an exclusive license and lots
14 of sublicenses, and lots of sales of the product, to say
08:58:41 15 that that calculation somehow is insufficient, which is what
16 the standard -- or what the jury instruction would indicate
17 doesn't make any sense based upon the evidence.

18 And I believe based upon Coda's argument that they're
19 one and the same, they're not one and the same.

08:59:17 20 But in any event, that, I think, would be confusing to
21 the jury.

22 So with that, you can add anything you want to the
23 record. I want to go back and finalize jury instructions.

24 Anything further?

08:59:31 25 MS. QUADRINO: No, Your Honor.

1 MR. CASTANIAS: No, Your Honor. Thank you very
2 much.

3 THE COURT: All right. We're going to put the
4 jury instructions in order, give you all copies -- would you
5 refer copies e-mailed to you or in paper form?

6 MS. HARTMAN: May we have both, please?

7 THE COURT: Both?

8 MR. GRIFFITH: Paper for me, Your Honor.

9 THE COURT: What?

08:59:50 10 MR. GRIFFITH: Paper.

11 MR. CLOERN: Yeah, I would like a paper copy.

12 MR. CASTANIAS: And I think the parties would
13 appreciate having an e-mail copy for their records. Those
14 are free.

09:00:01 15 MR. GRIFFITH: Can we get it on a white board?

16 THE COURT: So there will be an entry on the
17 Court's docket that adopts the exhibit lists so that we have
18 a record of the exhibit lists.

19 (Recess taken, 9:00 a.m.)

09:42:55 20 (Outside the presence of the jury, 9:43 a.m.)

21 THE COURT: All right. We will be escorting the
22 jurors now that our technical difficulties have been
23 resolved. And each side will have 70 minutes.

24 Would anyone like warnings? I know you have teams
09:43:34 25 here. Would anyone like a warning?

1 No warnings. Okay.

2 And, Mr. Cloern, are you going to give the initial
3 closing?

4 MR. CLOERN: I'm going to give the closing, yeah.

09:43:44 5 THE COURT: Who is going to doing the rebuttal?

6 MR. CLOERN: I will do the rebuttal.

7 THE COURT: You're doing the whole thing?

8 MR. CLOERN: Yes, Your Honor. I just wanted to
9 know who call upon.

09:43:55 10 What about Mr. Griffith, are you.

11 MR. GRIFFITH: I am doing the closing.

12 THE COURT: All right. So now I know who to call
13 upon.

14 So what we'll do is read the jury instructions,
09:44:22 15 because it's a lot of sitting for the jurors. Read the jury
16 instruction, take a ten-minute breaks, we'll hear your
17 initial close, Mr. Cloern, take a brief ten-minute break,
18 we'll hear your close, Mr. Griffith, and then we'll go
19 straight to rebuttal because that's usually more condensed,
09:44:42 20 I would presume.

21 We will take a -- oh, no, we won't take a break. I'll
22 just have the rest of my jury instructions which are like a
23 page or two. The jury goes to deliberations, so that's the
24 procedure we're going to use.

09:44:56 25 Two little breaks for the jury because otherwise

1 they're sitting way too long.

2 (Jury in, 8:45 a.m.)

3 THE COURT: Good morning, members of the jury.

4 JURORS: Good morning.

09:46:50 5 THE COURT: I apologize for the delay in start
6 time. It was my primarily due to some technical
7 difficulties that we had, but those have been worked out.
8 And appreciate your patience.

9 On your way into the courtroom you were handed -- you
09:47:05 10 were carrying in your notebooks and you were also given some
11 jury instructions. There is a tab marked jury instructions
12 in your notebooks. If you would place those jury
13 instructions and the verdicts forms, as well, in your
14 notebooks, we will proceed.

09:47:30 15 All right. So this morning the Court will instruct
16 you on the law that applies. Following my instructions, you
17 will hear from the attorneys relative to closing arguments.
18 Then I will have some very brief instructions for you. And
19 then you will retire to deliberate on the case.

09:48:05 20 So that's the order of events.

21 We will take two fairly short breaks, one after I read
22 the instructions and one after you hear the plaintiffs'
23 closing argument.

24 So just know that that's how we're going to break it
09:48:30 25 up this morning.

1 So if you would at this time, please turn to your jury
2 instructions. You will see that on pages 2 and 3 of your
3 instructions, there is a table of contents. That's just to
4 assist you, should you want to refer to jury instructions
09:48:52 5 during your deliberations.

6 We're now going to begin on page 4.

7 And if you wish, you may read along as the Court reads
8 the instructions to you.

9 Now that you have heard the evidence, it is my duty to
09:49:09 10 instruct you about the applicable law. It is your duty to
11 follow the law as I will state it and to apply it to the
12 facts as you find them from the evidence in the case. Do
13 not single out one instruction as stating the law, but
14 consider the instructions as a whole. You are not to be
09:49:28 15 concerned about the wisdom of any rule of law stated by me.
16 You must follow and apply the law.

17 The lawyers may refer to some of the governing rules
18 of law in their arguments. If there is any difference
19 between the law stated by the lawyers and as stated in these
09:49:45 20 instructions, you are governed by my instructions.

21 Nothing I say in these instructions indicates that I
22 have any opinion about the facts. You, not I, have the duty
23 to determine the facts.

24 You must perform your duties as jurors without bias or
09:50:01 25 prejudice as to any party. The law does not permit you to

1 be controlled by sympathy, prejudice, or public opinion.

2 All parties expect that you will carefully and impartially
3 consider the evidence, follow the law as it is now being
4 given to you, and reach a just verdict regardless of the
09:50:20 5 consequences.

6 During your deliberations, you must not communicate
7 with or provide any information to anybody by any means
8 about this case. You may not use any electronic device or
9 media such as the telephone, a mobile phone, smartphone,
09:50:38 10 iPhone, or computer, the internet, any internet service, any
11 text or instant messaging service, any internet chat room,
12 blog, or website such as Facebook, Google+, MySpace,
13 LinkedIn, YouTube or Twitter, to communicate to anyone any
14 information about this case or to conduct any research about
09:50:58 15 this case until I accept your verdict.

16 In other words, you cannot talk to anyone on scores
17 responsible request anyone or electronic communicate with
18 anyone about this case. You can only discuss the case in
19 the jury room with your fellow jurors during deliberations.
09:51:16 20 I expect you will inform me as soon as you become aware of
21 another jurors' violation of these instructions.

22 You may not use these electronic means to investigate
23 or communicate about the case because it is important that
24 you decide this case based solely on the evidence presented
09:51:30 25 in this courtroom. Information on the internet or available

1 through social media might be wrong, incomplete or
2 inaccurate. You are only permitted to discuss the case with
3 your fellow jurors during deliberations because they have
4 seen and heard the same evidence you have.

09:51:47 5 In our judicial system, it is important that you are
6 not influenced by anything or anyone outside of this
7 courtroom. Otherwise, your decision may be made based on
8 information known only by you and not your fellow jurors or
9 the parties in this case. This would unfairly and adversely
09:52:07 10 impact the judicial process.

11 You may use the notes taken by you during the trial.
12 However, the notes should not be substituted for your
13 memory. Remember, notes are not evidence. If your memory
14 should different from your notes, then you should rely on
09:52:22 15 your memory and not your notes.

16 Unless I state otherwise, you should consider each
17 instruction given to apply separately and individually to
18 plaintiffs and to defendants. You should consider and
19 decide this case as a dispute between persons of equal
09:52:38 20 standing in the community, of equal worth, and holding the
21 same or similar stations in life. A corporation is entitled
22 to the same fair trial as a private individual. All
23 persons, including corporations, stand equal before the law,
24 and are to be treated as equals.

09:52:57 25 The burden is on Coda to prove every element of its

1 claim. Coda bears that burden of proofing its claim by a
2 preponderance of the evidence with the exception of one
3 issue which I will address later. Failure to prove
4 ascension almost of a claim defeats that claim.

09:53:14 5 To establish by a preponderance of the evidence means
6 to prove that something is more likely so than not so. In
7 other words, a preponderance of the evidence means such
8 evidence as, when considered and compared with the evidence
9 opposed to it, has more convincing force and produces in
09:53:32 10 your minds a belief that what is sought to be proved is more
11 likely true than not true. The preponderance of the
12 evidence is also referred to as the greater weight of the
13 evidence. This standard does not require proof to an
14 absolute certainty since proof to an absolute certainty is
09:53:50 15 seldom possible in any case.

16 In determining whether any fact in issue has been
17 proved by a preponderance of the evidence, you may, unless
18 otherwise instructed, consider the testimony of all
19 witnesses regardless of who may have called them, and all
09:54:03 20 exhibits received in evidence, regardless much who may have
21 produced them.

22 You may not have heard of the term proof beyond a
23 reasonable doubt. That is a stricter standard that applies
24 in criminal cases. It does not apply in civil cases such as
09:54:18 25 this. You should, therefore, put it out of your mind.

1 Unless you are otherwise instructed, the evidence in
2 the case consists of the sworn testimony of the witnesses
3 regardless of who called the witness, all the exhibits
4 received in evidence, regardless of who may have produced
09:54:40 5 them, and all facts and events that may have been admitted
6 or stipulated to. Statements and arguments by the lawyers
7 are not evidence. The lawyers are not witnesses. What they
8 have said in their opening statements and what they will say
9 in their closing arguments at another time is intended to
09:54:55 10 help you interpret the evidence, but it is not evidence.
11 However, when the lawyers on both sides stipulate or agree
12 to the existence of a fact, you must, unless otherwise
13 instructed, accept the stipulation and regard that fact as
14 proved.

09:55:08 15 The lawyers' questions and statements are not
16 evidence. If a lawyer asks a witness a question that
17 contains an assertion of fact, you may not consider the
18 assertion as evidence of that fact.

19 When a lawyer asked a questioned or offered an exhibit
09:55:23 20 into evidence and a lawyer on the other side thought it was
21 not permitted by the rules of evidence, that lawyer may have
22 objected. If I overruled the objection, the question was
23 permitted to be answered, or the exhibit received into
24 evidence. If I sustained the objection, the question was
09:55:39 25 not permitted to be answered and the exhibit was not

1 received into evidence. Therefore, if I sustained an
2 objection to a question or to the admission of an exhibit,
3 you must ignore the question and must not guess what the
4 answer to the question might have been. In addition you
09:55:55 5 must not consider evidence that I have ordered stricken from the
6 record.

7 Generally speaking there are two types of evidence
8 that are presented during a trial, direct evidence and
9 circumstantial evidence. Direct evidence is direct proof of
09:56:09 10 a fact. Direct evidence is the testimony of a person who
11 asserts or claims to have actual knowledge of a fact such as
12 an eyewitness, about what the witness said or heard or did.
13 Indirect or circumstantial evidence is proof of a claim of
14 facts and circumstances indicating the existence or
09:56:27 15 nonexistence of a fact. Indirect or circumstantial evidence
16 is proof of one or more facts from which you could find
17 another fact.

18 You should consider both kinds of evidence. The law
19 makes no distinction between the weight or value to be given
09:56:48 20 to either direct or circumstantial evidence. Nor is a
21 greater degree of certainty required of circumstantial
22 evidence. You are simply required to find the facts in
23 accordance with the preponderance of all the evidence in the
24 case, both direct and circumstantial. You are to decide how
09:57:07 25 much weight to give any evidence.

1 You are to consider only the evidence in the case.
2 However, you are not limited to the statements of the
3 witnesses. In other words, you are not limited to what you
4 see and hear as the witnesses testify. You may draw from
09:57:20 5 the facts that you find have been proved such reasonable
6 inferences as seem justified in light of your experience.
7 Inferences are deductions or conclusions that reason and
8 common sense lead to you draw from facts established by the
9 evidence in the case.

09:57:37 10 The law does not require any person to call as
11 witnesses all persons who may have been present at any time
12 or place involved in the case, or who may appear to have
13 some knowledge of the matters at issue in this trial. Nor
14 does the law require any party to produce as exhibits all
09:57:58 15 papers and things mentioned in the evidence in the case.

16 The rules of evidence ordinarily do not permit
17 witnesses to testify as to opinions or conclusions. There
18 is an exception to this rule for expert witnesses. An
19 expert witness is a person who by education and experience
09:58:19 20 has become expert in some art, science, profession or
21 calling. Expert witnesses state their opinions as to
22 matters in which they profess to be expert and may also
23 state their reasons for their opinions. You should consider
24 each expert opinion received in evidence in this case and
09:58:37 25 give it such weight as you think it deserves. If you should

1 decide the opinion of an expert witness is not based upon
2 sufficient education and experience, or if you should
3 conclude the reasons given in support of the opinion are not
4 sound, or if you feel the expert's evidence is outweighed by
09:58:59 5 other evidence, you may disregard the opinion entirely.

6 Sometimes evidence may be admitted concerning only a
7 particular party or only for a particular purpose and not
8 generally against all parties or for all purposes. For the
9 limited purpose for which this evidence has been received,
09:59:16 10 you may give it such weight as you feel it deserves. You
11 may not, however, use this evidence for any other purpose or
12 against any party not specifically mentioned.

13 Certain graphics, charts, and summaries have been
14 shown to you in order to help explain facts disclosed by
09:59:35 15 books, records, and other documents that are in evidence in
16 the case. These graphics, charts, or summaries are not
17 themselves evidence or proof of any facts. If the graphics,
18 charts, or summaries do not correctly reflect facts or
19 figures shown by the evidence in the case, you should
09:59:53 20 disregard them. In other words, the graphics, charts, or
21 summaries are used only as a matter of convenience. To the
22 extent that you find they are not truthful summaries of
23 facts or figures shown by the evidence in the case, you are
24 to disregard them entirely.

10:00:09 25 Evidence as to any oral statements or admissions

1 claimed to have been made outside of Court by a party to any
2 case should always be considered with caution and weighed
3 with great care. The person alleged to have made the
4 alleged statement or admission may not have expressed
10:00:29 5 clearly the meaning intended or the witness testifying to an
6 alleged admission may have misunderstood or may have
7 misquoted what was actually said.

8 However, when an oral statement or admission made out
9 side of Court is proved by reliable evidence, the statement
10 or admission may be treated as trustworthy and should be
11 considered along with all other evidence in the case.

12 The weight of the evidence is not necessarily
13 determined by the number of witnesses testifying to the
14 existence or nonexistence of any fact. You may find the
10:01:02 15 testimony of a small number of witnesses as to any fact is
16 more credible than the testimony of a large number of
17 witnesses to the contrary.

18 You are not bound to discuss any issue of fact in
19 accordance with the testimony of any number of witnesses
10:01:15 20 that does not produce in your minds belief in the likelihood
21 of truth as against the testimony of a lesser number of
22 witnesses or other evidence producing such belief in your
23 minds. The test is not what side brings the greater number
24 of witnesses or takes the most time to present its evidence,
10:01:34 25 but which witnesses and which evidence appealed to your

1 minds as being most accurate and otherwise trustworthy.

2 In deciding the facts, you may have to decide which
3 testimony to believe and which testimony not to believe.

4 You may believe everything a witness says, part of it, or
10:01:53 5 none of it. In considering the testimony of any witness,

6 you may take into account many factors, including the
7 witness's opportunity and ability to see, hear, and know the
8 things the witness testified about, the quality of the

9 witness's memory; the witness's appearance and manner while
10:02:11 10 testifying; the witness's interest in the outcome of the

11 case; any bias or prejudice the witness may have; other

12 evidence that may have contradicted the witness's testimony,
13 and the reasonableness of the witness's testimony in light
14 of all of the evidence. The weight of the evidence does not

10:02:28 15 necessarily depend upon the number of witnesses who testify.

16 You are the sole judges of the credibility of the
17 witnesses and the weight their testimony deserves. You may
18 be guided by the appearance and conduct of the witnesses, or
19 by the manner in which the witness testifies or by the

10:02:47 20 character of the testimony given or by evidence contrary to
21 the testimony. You should carefully examine all the

22 testimony given, the circumstances under which each witness
23 has testified, and every matter in evidence tending to show
24 whether a witness is worthy of belief. Consider each

10:03:05 25 witness's intelligence, motive, and state of mind and

1 demeanor or manner while testifying.

2 Consider the witness's ability to observe the matters
3 as to which the witness has testified and whether the
4 witness impresses you as having an accurate or
10:03:21 5 reckless of these matters. Also, consider any relation each witness may
6 have with either side of the case, the manner in which each
7 witness might be affected by the verdict, and the extent to
8 which the testimony of each witness is either supported or
9 contradicted by other evidence in the case.

10:03:37 10 Inconsistencies or discrepancies in the testimony of a
11 witness or between the testimony of different witnesses may
12 or may not cause you to discredit such testimony. Two or
13 more persons seeing an event may see or hear it differently.
14 In weighing the effect of a discrepancy, always consider
10:03:56 15 whether it pertains to a matter of importance or an
16 unimportant detail, and whether the discrepancy results from
17 innocent error or intentional falsehood.

18 After making your own judgment, you will give the
19 testimony of each witness such weight, if any, that you may
10:04:12 20 think it deserves. In short, you may accept or reject the
21 testimony of any witness in whole or in part.

22 Some testimony was presented by way of videotaped or
23 transcript deposition. A deposition consists of sworn
24 recorded answers to questions asked of a witness in advance
10:04:31 25 of the trial by one or more of the attorneys for the parties

1 to the case. The questions and answers were shown or read
2 to you during the trial. Such testimony is entitled to the
3 same consideration and is to be judged as to credibility and
4 weighed and otherwise considered by you insofar as possible,
10:04:51 5 in the same way as if the witness had been present and had
6 testified from the witness stand.

7 A witness may be discredited or impeached by
8 contradictory evidence or by evidence that at some other
9 time the witness has said or done something or has failed to
10 say or do something that is inconsistent with the witness's
11 present testimony.

12 If you believe any witness has been impeached and thus
13 discredited, you may give the testimony of that witness such
14 credibility, if any you think this deserves.

10:05:26 15 If a witness is shown knowingly to have testified
16 falsely about any material matter, you have a right to
17 distrust such witness's other testimony and you may reject
18 all the testimony of that witness or give it such
19 credibility as you think -- as you may think it deserves.

20 An act or omission is knowingly done if that act is
21 done voluntary and intentionally and not because of mistake
22 or accident or other innocent reason.

23 A corporation may act only through natural persons as
24 its agents or employees. In general, any agent or employee
10:06:10 25 of a corporation may bind the corporation by acts and

1 declarations, including unlawful acts made while acting
2 within the scope of the authority delegated by the
3 corporation or within the scope of the duties as an employee
4 of the corporation.

10:06:24 5 If a party fails to produce evidence upped that
6 party's control and reasonably available to that party and
7 not reasonably available to the adverse party, then you may
8 infer that the evidence is unfavorable to the party who had
9 produced it and did not -- who could have produced it and
10 did not.

11 Evidence that, at some other time while not under
12 oath, a witness who is not a party to this action has said
13 or done something inconsistent with the witness's testimony
14 at trial, may be considered for the sole purpose of judging
10:07:02 15 the credibility of the witness. However, such evidence may
16 never be considered as evidence of proof of the truly of any
17 such statement.

18 Where the witness is a party to the case and by such
19 statement or other conduct admits some fact or facts within
10:07:22 20 the witness's interest, then such statement or other
21 conduct, if knowingly made or done, may be considered as
22 evidence of the truth of the fact or facts so admitted by
23 such party, as well as for the purpose of judging the
24 credibility of the party as a witness.

10:07:39 25 Any act or omission is "knowingly" done if that act is

1 done voluntarily and intentionally and not because of
2 mistake or accident or other innocent reason.

3 That concludes the part of my instructions explaining
4 your duties and the general rules that apply in every civil
10:08:03 5 case. In a moment, I will explain the elements of the
6 plaintiffs' claim against defendants.

7 As you already know, there are three plaintiffs in
8 this lawsuit. Coda Development s.r.o., Coda Innovations
9 s.r.o., and Frantisek Hrabal. In these instructions, I
10:08:21 10 refer to them collectively as either Coda or plaintiffs.
11 Similarly, there are two defendants, the Goodyear Tire &
12 Rubber Company, and Robert Benedict, whom I refer to
13 collectively as either Goodyear or defendants.

14 Plaintiffs have asserted a claim for misappropriation
15 of trade secrets under Ohio law involving multiple alleged
16 trade secrets. Generally Coda claims that Goodyear
17 misappropriated Coda's trade secrets by using them in
18 Goodyear's air maintenance tire, referred to as AMT,
19 programs and by disclosing them in its patent filings.

10:09:01 20 During this trial, you have heard testimony regarding
21 17 asserted trade secrets. That number is now 12. You need
22 not be concerned about the reasons for this change, but
23 should proceed to decide the remaining trade secret issues
24 as they are presented to you in these instructions.

10:09:17 25 Before you can find for the plaintiffs, you must find

1 by a preponderance of the evidence that, A, the information
2 at issue was a trade secrets, and B, the defendants
3 misappropriated one or more of plaintiffs' trade secrets by
4 improper meanings, and C, the plaintiffs suffered damages
10:09:37 5 proximately caused by the misappropriation.

6 Before you can decide whether defendants
7 misappropriated any Coda trade secrets, you must first find
8 that Coda proved by a preponderance of the evidence that it
9 possessed specific identifiable trade secrets.

10:09:53 10 Trade secrets -- trade secret means information,
11 including the whole or any portion or phase of any
12 scientific or technical information, design, process,
13 procedure, formula, pattern, compilation, program, device,
14 method, technique or improvement, business information or
10:10:15 15 plans, financial information, listing of names, addresses,
16 or telephone numbers, that satisfies all of the following.

17 A, the information derived independent economic value,
18 actual or potential, from, one, not being generally known to
19 other persons who can obtain economic value from its
10:10:35 20 disclosure or use, and, two, not being readily ascertainable
21 by proper means by other persons who can obtain economic
22 value from its disclosure or use, and B, the information is
23 the subject of efforts that are reasonable under the
24 circumstances to maintain its secrecy.

10:10:57 25 Because Coda claims rights and trade secrets, it bears

1 the burden of defining the information for which protection
2 is sought with sufficient definiteness to permit the jury to
3 apply the criteria for protection and to determine the fact
4 of an appropriation. Generic descriptions of broad areas of
10:11:19 5 technology do not qualify as trade secrets. Trade secrets
6 must be concrete.

7 The item for which trade secret protection is claimed
8 must also have some independent economic value. Information
9 is valuable to a business if it gives that business a
10:11:38 10 competitive advantage over other businesses that do not know
11 the information.

12 To help you determine whether Coda enjoyed either an
13 actual or potential competitive advantage, you may consider
14 such things as:

10:11:52 15 One, the degree to which the information was generally
16 known or readily ascertainable by others.

17 Two, the extent to which Coda used or uses the
18 information in its business.

19 Three, whether the information allows Coda to earn
10:12:08 20 increased profits or operate its business more efficiently.

21 Four, what gain or benefits Goodyear's business would
22 have obtained from the information and

23 Five, what money, effort, and time Coda expended to
24 develop the information.

10:12:22 25 In order to be a trade secret, something cannot be

1 generally known or readily ascertainable in the try. If the
2 information could be readily learned or ascertained by
3 legitimate means, such as by reading publicly available
4 literature or by examining publicly available products or if
10:12:42 5 the information is commonly known in the industry, no one
6 may claim it as a trade secret.

7 Therefore, if you find that any of the items that Coda
8 is claiming to be trade secrets are actually in the public
9 domain, then he must find that the item is not a trade
10:13:01 10 secret and you cannot award Coda damages for that item.

11 Also, information disclosed in a patent is a matter of
12 public record and thus by definition is not subject to trade
13 secret protection. Therefore, if you find that any of the
14 claimed trade secrets are disclosed in Coda's patents or
10:13:22 15 published patent applications, then you must find that item
16 is not a trade secret and you cannot award Coda damages for
17 that item.

18 If the information could be readily learnedly
19 legitimate methods such as by reading publicly available
10:13:40 20 literature or by examining publicly available products or if
21 the information is commonly known in an industry, no one may
22 claim it as a trade secret. However, a trade secret can
23 exist in a combination of characteristics and components,
24 each of which, by itself, is commonly known or in the public
10:13:58 25 domain. As long as the unified process, formula or design

1 is unique and affords its owner a competitive advantage, it
2 is a trade secret.

3 "Misappropriation" means the:

4 A, acquisition of another's trade secret by a person
10:14:15 5 who knows or has reason to know that the trade secret was
6 acquired improper means, or

7 B, disclosure and/or use of another trade secret by a
8 person who both lacked the express or implied consent of
9 that other person, and who:

10:14:29 10 One, used improper means to acquire knowledge of the
11 trade secret or

12 Two, knew or had reason to know at the time of the
13 disclosure and/or use that the knowledge of the trade secret
14 that the person acquired was derived from or through a
10:14:46 15 person who had utilized improper means to acquire it,
16 acquired it under circumstances giving rise to a duty to
17 maintain its secrecy or limit its use, or derived from or
18 through a person who owed a duty to the plaintiffs to
19 maintain its secrecy or limit its use.

20 Before you can find for the plaintiffs, you must find
21 by preponderance of the evidence that the defendants
22 misappropriated one or more of plaintiffs trade secrets by
23 improper means.

24 "Improper means" includes theft, misrepresentation, a
10:15:21 25 breach of a duty to maintain secrecy, or inducement of a

1 breach of a duty to maintain secrecy. This can include
2 otherwise lawful conduct that is improper under the
3 circumstances. Improper means does not include discovered
4 information by independent invention or reverse engineering.
10:15:38 5 Reverse engineering is starting with a known product and
6 working backward to find the method by which it was
7 developed.

8 The user of another's trade secret is liable even if
9 they use it with modifications or improvements upon it
10:15:56 10 affected by their own efforts, so long as the substance of
11 the process is substantially derived from the other's
12 asset -- I'm sorry, from the other's secret.

13 The designation of a document as "confidential" does
14 not automatically make anything contained in the document a
10:16:12 15 trade secret.

16 Additionally, the fact that Goodyear and/or Dr.
17 Benedict may have signed a nondisclosure agreement with Coda
18 does not automatically mean that any information they
19 obtained from Coda are trade secrets.

20 Finally, when looking at the exhibit, you may not
21 consider extraneous highlighting, markings or labels such as
22 "confidential" or "attorney's eyes only" in determining
23 whether a trade secret exists. These extraneous marks were
24 made by attorneys during pretrial discovery and are
10:16:49 25 irrelevant to your evaluation of the evidence. You must

1 determine whether a particular item is a trade secret on the
2 instructions I have given you.

3 Coda claims that Goodyear misappropriated some or all
4 of Coda's trade secrets, which I will list for you now. Do
10:17:13 5 not be concerned that there are trade secret numbers missing
6 from this list.

7 To prove its claim, Coda must prove that any of the
8 following qualify as a trade secret that Goodyear
9 misappropriated.

10:17:31 10 We have alleged trade secret 1. A self-inflation
11 system that operates when the tire rotates in either
12 direction and the desirability of a symmetrical
13 implementation of the pump system in the tire such as the
14 use of two mirror-image pumps.

10:17:54 15 Alleged trade secret number 2. Coda's knowledge of
16 how to design and develop a peristaltic pump with symmetry
17 that takes into consideration symmetrical pump tubes
18 providing bidirectional functionality and uniformity,
19 variant pump tube lengths and configurations that can be
20 less than fully circular, fully circular and super circular
21 and a bidirectional arrangement implementing the principles
22 of symmetry such as the example of 360-degree oppositely
23 oriented pumps in each sidewall of a tire.

24 Alleged trade secret number 3. Use of a regulator
10:18:41 25 with a threaded member in a self-inflating tire to adjust

1 the space between the membrane and the aperture, thereby
2 resulting in a change in regulator pressure.

3 Alleged trade secret number 5. Coda's technique
4 regarding the alternative to molding a pump chamber into the
10:19:02 5 tire by embedding and removing a filament to form a cavity
6 in the tire, and the improvements in the filament embedding
7 process by coating the filament in a silicone lubricant
8 before pressing and vulcanizing the tire.

9 Alleged trade secret number 7. Coda's design and
10:19:24 10 development of a multi-purpose interface for transporting
11 air in a self-inflating tire that can connect to the air
12 source, connect to the tire interior, connect to the
13 peristaltic pump, serve as an end to the peristaltic pump,
14 connect to the regulator, carry the regulator, go around or
10:19:46 15 through the bead, go around or through the tire layers,
16 click to the bead, and whole the filter.

17 Alleged trade secret number 11. Coda's knowledge of
18 how to design and develop self-inflating tire pump and
19 groove solutions consisting of round pump tubing in an
10:20:04 20 outward facing groove with straight angled interior
21 geometry; pump tubing with geometry that interlocks with its
22 seat; pump tubing with elliptical interior cross-section;
23 variant pump tube, groove and chamber dimensions, size and
24 materials; pump tube and groove design to minimize internal
10:20:27 25 friction; a "tubeless" pump solution, that is, a pump that

1 may compose an integral part of tire; cross-section designs
2 that minimize stress on compression in order to improve
3 durability; and tubing with reason forced wall.

4 Alleged trade secret number 16. Coda's design,
10:20:50 5 development, and testing regarding the feasibility and
6 improvements in self-inflating tire technology by embedding
7 a tube in a groove in a tire sidewall to act as a
8 peristaltic pump.

9 Alleged trade secret number 20. Coda's knowledge of
10:21:05 10 how to design and develop self-inflating tire systems with
11 circulating and noncirculating pump variations comprised of
12 the disclosure of technical information through observations
13 and descriptions of the three-way valve regulator and
14 explanations of the function and air paths for the states of
10:21:26 15 recirculation and inflation; closure elements related to
16 recirculation systems and a pressurized air reservoir that
17 would permit the storage of air within the system without
18 the need to engage the pump tube with each tire revolution;
19 recirculation at different pressures such as ambient
10:21:48 20 pressure; recirculation through various paths, such as
21 through the tire, the atmosphere and the pump tube; the
22 safety benefit of recirculating around the pump tube
23 isolated from the tire cavity; a check valve on intake
24 between the pump tube and the atmosphere, to only permit air
10:22:12 25 in when pressure in the pump tube falls below atmospheric

1 pressure; an a check valve on output, paren, between the
2 pump tube and tire interior, paren, to only allow air into
3 the tire when pressure in the pump tube exceeds the tire
4 pressure.

10:22:33 5 Alleged trade secret number 22. Coda's design and
6 development of pressure management device alternatives for
7 self-inflating tires consisting of pressure management
8 devices with the membrane containing a reference space, a
9 spring-assisted membrane, a spring-loaded closure element,
10 and electronic management, and knowledge of the different
11 pressure-temperature response characteristics of these
12 alternatives.

13 Alleged trade secret number 23. Coda's development of
14 a functional self-inflating tire as demonstrated by the test
10:23:15 15 results confirming that the tire pump can generate pressure
16 higher than the pressure in the tire cavity, through the
17 test results showing that the pump placed on the tread could
18 generate 6.5 absolute atmospheres of pressure, paren, 5.5
19 relative atmospheres, close paren; the test results showing
10:23:36 20 that the tube in groove pump of the prototype could generate
21 3.3 absolute atmospheres of pressure; and test results that
22 demonstrated that the flap tubes could generate 1 relative
23 atmosphere of pressure.

24 Alleged trade secret number 24. Coda's knowledge
10:23:56 25 regarding the optimal location for placement of a pump in a

1 tire for tire manufacturers, namely, in the sidewall close
2 to and above the rim where the cyclically -- I'm sorry,
3 where the tire cyclically deforms in response to
4 deformation; or

10:24:16 5 Alleged trade secret number 25. Coda's knowledge of
6 potential tire making cost savings promoted by
7 self-inflating tire technology, by permitting the removal or
8 reduction of inner liner.

9 And that's the end. There should not be an "or"
10 there.

11 In deciding whether the information at issue satisfies
12 the definition of a trade secret, you may consider any or
13 all of the following factors:

14 A. The extent to which the information is known
15 outside of the business.

16 B. The extent to which the information is known to
17 those inside of the business such as by the employees.

18 C. The precautions taken by the plaintiffs to guard
19 the secrecy of the information.

10:25:07 20 D. The value of the plaintiffs in having exclusive
21 possession of the information.

22 E. The amount of effort or money extended in
23 obtaining or developing the information and

24 F, the amount of time and expense it would take for
25 others to acquire and duplicate the information.

1 The plaintiffs -- that should read the plaintiffs are
2 required only to take reasonable active steps under the
3 circumstances to protect the trade secrets. This does not
4 require absolute secrecy or that the plaintiffs use all
10:25:51 5 conceivable efforts to maintain secrecy.

6 Under the nondisclosure agreement between the parties,
7 Goodyear could not share any confidential information
8 Goodyear and inquired from Coda during the two 2009 meetings
9 with anyone or use it except to evaluate a possible
10:26:12 10 cooperation with Coda.

11 Goodyear, however, had no obligation to Coda with
12 respect to any information that was available to the general
13 public at the time of disclosure; became at a later date
14 available to the general public through no fault of
10:26:33 15 Goodyear; and then only after such date, or Goodyear
16 demonstrated was in its possession before receipt.

17 In the case of disclosures of confidential information
18 made orally or by visual inspection, Coda had the right, or
19 if requested by Goodyear, the obligation to confirm in
20 writing within 60 days after the disclosure was made the
21 fact and general nature of such disclosure.

22 All of the parties' obligations under the disclosure
23 agreement ended after January 1, 2012.

24 You may award damages only for those injuries or
10:27:19 25 damages that you find have been proven by a greater weight

1 of the evidence to have been proximately or directly caused
2 by the other party's wrongful conduct. You must distinguish
3 between the existence of a wrongful act and the existence of
4 injuries or damages naturally resulting from the wrongful
10:27:41 5 act. Thus, even if you find for Coda on a claim, you must
6 ask yourself whether Coda has also proven by the greater
7 weight of the evidence, that the wrongful act caused the
8 actual losses Coda alleges to have suffered.

9 If you find that defendants misappropriated one or
10:28:01 10 more of plaintiffs' trade secrets, plaintiffs are entitled
11 to recover compensatory damages.

12 Plaintiffs bear the burden of proving damages and may
13 not recover if their entitlement to damages is based upon
14 speculation or conjecture. If it is certain that damages
10:28:19 15 have resulted, however, mere uncertainty as to the amount
16 will not preclude the right of recovery. Although to set a
17 damage figure arbitrarily or through pure guesswork is
18 impermissible, once the existence of damage has been shown,
19 all that an award of damages requires is substantial
10:28:41 20 evidence in the record to permit you to draw reasonable
21 inferences and make a fair and reasonable assessment of the
22 amount of damages.

23 If you find for Coda but Coda failed to prove by the
24 greater weight of the evidence any amount of damages, you
10:28:56 25 may also award Coda nominal damages. "Nominal" means

1 trifling or small.

2 One form of compensatory damages is the actual loss to
3 the plaintiffs caused by the misappropriation.

4 Actual loss means the plaintiffs' lost profits. Here
10:29:19 5 plaintiffs seek their lost profits in the form of lost
6 licensing revenue. Such damages are calculated by deciding
7 what the plaintiffs were entitled to receive had the
8 misappropriation of trade secrets not occurred.

9 Coda may recover damages for trade secret
10:29:39 10 misappropriation only for the period in which information is
11 entitled to protection as a trade secret plus an additional
12 period, if any, in which Goodyear retained an advantage over
13 good faith competitors because of the a misappropriation.
14 This period may be measured by the time it would have taken
10:30:03 15 Goodyear to obtain the information by proper means such as
16 researching publications, reverse engineering, or
17 independent development.

18 The amount you find as damages must be based on the
19 value attributable to each misappropriated trade secret as
10:30:19 20 distinct from nontrade secret features or other factors such
21 as Coda's patents, nonmisappropriated trade secrets, public
22 or general knowledge, know-how, marketing, or advertising or
23 Goodyear's size or market position. An amount compensating
24 Coda for damages must reflect the value attributable to the
10:30:42 25 misappropriated trade secret or secrets and no more. The

1 process of separating the value of the allegedly
2 misappropriated secret or secrets from the value of all
3 other features is called apportionment. Your award must be
4 apportioned so that it is based only on the value of the
10:31:05 5 misappropriated trade secrets -- trade secret or secrets and
6 no more.

7 If you find that Goodyear misappropriated Coda's trade
8 secret or secrets, you must decide whether you find by clear
9 and convincing evidence that Goodyear acted with malice.

10:31:21 10 "Clear and convincing" means that the evidence must
11 produce in your minds a firm belief or conviction about the
12 facts to be proved or the truth of the matter. It must be
13 more than evidence that simply outweighs or over balances
14 the evidence opposed to it. This is the standard that
10:31:42 15 applies to any punitive damages that you may award.

16 Conduct is malicious if it is done with a state of
17 mind characterized by hatred, ill will or a spirit of
18 revenge or if it is done with a conscious disregard for the
19 rights and safety of another person that has a great
10:32:02 20 probability of causing substantial harm. Substantial means
21 major or significant and not trifling or small.

22 The fact that I have instructed you as to the proper
23 measure of damages should not be considered as indicating
24 any view of mine as to which party is entitled to your
10:32:19 25 verdict in this case. Instructions as to the measure of

1 damages are given for your guidance only in the event you
2 should find in favor of the plaintiffs from a preponderance
3 of the evidence in the case in accordance with the other
4 instructions.

10:32:41 5 Okay. So next we are going to review the verdict
6 forms that you will have to consider in this case and record
7 your verdict.

8 And those are located in your binders after numbered
9 page 29.

10:32:56 10 You'll see that there is a document there entitled
11 "Verdict Forms."

12 And that document consists of seven pages.

13 Have you all located that document? Okay.

14 So I'm going to just read through the documents.

10:33:16 15 So on the first page it says: In answering the
16 following questions and filling out the verdict forms, you
17 are to follow all the jury instructions I have given. Your
18 answers to each question must be unanimous. Some of the
19 questions contain legal terms that are defined and explained
20 in detail in the jury instructions. Please refer to the
21 jury instructions if you are unsure about the meaning or
22 usage of any legal term that appears in the questions below.

23 So just as we've been using all along, or doing all
24 along, in this verdict form, Coda refers collectively to
10:33:52 25 plaintiffs Coda Development s.r.o., Coda Innovations s.r.o.,

1 and Frantisek Hrabal.

2 Goodyear refers collectively to defendants the
3 Goodyear Tire & Rubber Company and Robert Benedict.

4 So then we go to the next page. You'll see the first
10:34:08 5 form.

6 So the first form asking you a question. Has Coda
7 proven by a preponderance of the evidence that in January
8 2009 and/or June 2009, it possessed specific identifiable
9 trade secrets that derive independent economic value, actual
10 or potential, from not being generally known to or readily
10:34:24 11 ascertainable by proper means by other persons who can
12 obtain economic value from their disclosure or use.

13 And then you'll see that there is a chart there with
14 the 12, a list of the 12 trade secrets that you will
10:34:43 15 consider in this case. And if you find that Coda has proven
16 that they had a secret which meets the definition,
17 then -- and you'll analyze each trade secret
18 separately -- you will then check that box yes which would
19 be a finding for Coda.

20 If you find that any one or more of the alleged trade
21 secrets do not meet that definition, then you would, for
22 each one that you so find, you would check the appropriate
23 box of no. And then you would find -- that would be a
24 finding for Goodyear.

25 So if you have answered no -- no, then you'll see

1 there is some directions at the bottom of the page.

2 If you have all no answers for question 1, then you'll
3 stop answering all the questions and you'll go to the last
4 page of the verdict form. And each of you will then sign
10:35:51 5 the verdict form and date it. And, again, your decision has
6 to be unanimous.

7 Now, if -- you'll see the second instruction on that
8 page 2 is verdict form continues on the next page if you
9 check yes in any of the boxes.

10:36:11 10 So we'll review verdict form number 2. It says for
11 each listed trade secret where you answered yes in question
12 1, has Coda proved by a preponderance of the evidence that
13 Goodyear misappropriated Coda's trade secrets? And you'll
14 check the boxes below that reflect your verdict for each of
10:36:29 15 the trade secrets that you'll be -- that you might consider
16 relative to verdict form number 2.

17 Again, if you have all no answers for what you will
18 answer in question 2, should you -- then you stop answering
19 questions. Go to the last page and seen the verdict form.

20 10:36:55 If you have any yeses checked, then you'll go to
21 number 3 on the next page.

22 22 And that says for each listed trade secret where you
23 answered yes in question 2, has Coda proven by a
24 preponderance of the evidence that Coda suffered damage
10:37:16 25 proximately caused by the misappropriation?

1 And, again, if you consider this form, you'll check
2 either yes or no.

3 If your answers to all the questions that you may
4 consider relative to this form is no, then you'll stop
10:37:34 5 answering questions. You'll go to the last page and sign
6 the verdict form. You won't complete any of the pages in
7 between.

8 If you checked yes for any of them, then you go to
9 verdict form number 4.

10:37:49 10 And that reads, what amount of compensatory damages do
11 you award to Coda for its actual loss caused by Goodyear's
12 trade secret misappropriation? State the amount, or if you
13 find that Coda failed to prove by the greater weight of the
14 evidence any amount of damages set forth a nominal amount
10:38:11 15 such as \$1.

16 Should you consider punitive damages in this case,
17 you'll not -- you should not include it in any dollar amount
18 that you mind find for number 4, if you consider that form.

19 Now, number 5, has Coda proven by clear and convincing
10:38:31 20 evidence that Goodyear's misappropriation was willful and
21 malicious?

22 So if you consider this form, then you'll check either
23 yes or no. If you check yes, then you'll see the
24 instruction says if you answered yes, what punitive damages
10:38:49 25 if any do you find Coda is entitled to? And you'll fill in

1 the dollar amount on the line provided.

2 After then with that, you come to the end of the
3 verdict form, and again, that, this last page is where you
4 sign whatever verdict you render in the case.

10:39:08 5 So, I will ask the attorneys -- so anything
6 further -- let me put it this way. Anything further that
7 you believe the Court should explain relative to the verdict
8 forms.

9 Mr. Cloern?

10:39:37 10 MR. CLOERN: No Your Honor.

11 THE COURT: And Mr. Griffith?

12 MR. GRIFFITH: Nothing, Your Honor.

13 THE COURT: All right. And are there any
14 corrections, or objections to the instructions as given?

10:39:46 15 Mr. Cloern?

16 MR. CLOERN: No, Your Honor.

17 THE COURT: Mr. Griffith.

18 MR. GRIFFITH: No, Your Honor.

19 THE COURT: All right. So now as promised, you
20 get your first break. It will be a brief ten-minute break.
21 Upon your return, you will then hear the closing arguments
22 of counsel.

23 So your notebooks may just remain on your chairs. So
24 we'll be in recess for ten minutes.

10:40:05 25 THE DEPUTY CLERK: All rise.

1 (Jury out 10:40 a.m.)

2 (Recess taken.)

3 (Jury in, 10:5.)

4 THE COURT: All right. Members of the jury, as I
10:53:06 5 indicated prior to the break, at this time counsel for the
6 parties will have an opportunity to make closing arguments
7 to you. Each will be given an opportunity to review with
8 you the evidence each believes has been offered. It is also
9 their opportunity to suggest to you what inferences they
10:53:21 10 think you can reasonably draw from the evidence. Just, as I
11 have indicated a number of times shall the closing arguments
12 of counsel are not evidence.

13 So with that, Mr. Cloern, on behalf of Coda
14 plaintiffs, you may no present your closing argument.

10:53:42 15 MR. CLOERN: Thank you, Your Honor.

16 My name Boyd Cloern, and I have the privilege of
17 representing Mr. Hrabal and Coda. I want to start by
18 thanking you for your service. I know that you've all got
19 busy lives. You just spent two weeks of those lives here
10:54:14 20 with us, and we appreciate it. It's a sacrifice, I know,
21 but it's an important one because the American justice
22 system depends on it. It wouldn't function without citizens
23 donating their time in the way that you have.

24 So I thank you on behalf of the myself, behalf of my
10:54:32 25 team, and behalf most importantly, of Mr. Hrabal, and all of

1 the people who have stood behind him and Coda over the years
2 to help him try to bring self-inflating tire technology on
3 the road, make it a reality, because it truly is a
4 transformative technology for the economic, for the
10:54:56 5 environment, and for safety.

6 So, look, you guys have been here a long time. I'm
7 going to get right to the point, or at least what we think
8 the point is.

9 The case really comes down to one central issue, and
10:55:10 10 that's who do you believe? Do you believe Mr. Hrabal? Or
11 do you believe Dr. Benedict?

12 And the issue is this: Who do you think invented
13 this, a peristaltic pump tube location for a tube in groove
14 embodiment.

10:55:32 15 Dr. Benedict and Mr. Hrabal both agree on a couple
16 things, that this is an innovative and new solution over the
17 prior art, and that it is very valuable.

18 So the question, though, is whose idea was it? That
19 is for the jury. You guys, to decide.

20:56:04 20 Do you brief Mr. Hrabal, a man who spent six years of
21 his life studying tire deformation, working with peristaltic
22 pump tubes, quit his job, sold his car, burned through his
23 savings to go fund his research. But he was in the end
24 successful. He's the first person to create a prototype
10:56:31 25 peristaltic pump self-inflating tire that could generate

1 sufficient pressure to inflate in commercial truck tire.

2 And no one had ever done that before.

3 Or do you believe that Dr. Benedict came up with this
4 idea, which he says occurred to him in about an hour-long
10:56:47 5 meeting one afternoon with one of his colleagues, when he
6 had had no self-inflating tire peristaltic pump experience,
7 and only after meeting with Mr. Hrabal to study his
8 prototype.

9 So that's not for me to decide. That's for you to
10:57:04 10 decide based on the facts, and that's the testimony and
11 documents that you've seen in this case.

12 So let's go to the evidence.

13 So these are the trade secrets, just to set the table,
14 that Coda has asserted in this case. And let's first talk
10:57:25 15 about the trade secrets that -- and SIT technology that Mr.
16 Hrabal developed.

17 And so he testified about some of his first
18 experiments with peristaltic pump tubes, where after having
19 the idea he comes home and stitches a peristaltic pump on a
10:57:42 20 bicycle tire around spins it around and, lo and behold, the
21 balloon inflates.

22 So then he is obsessed. He's off. He builds the tire
23 rig that you see over here and he brought into court, pushes
24 tires together, starts studying tire deformation, really
10:58:03 25 obsessively.

1 He carves grooves in tire. You can see that the
2 bottom right-hand corner, and puts tubes there and tests
3 them.

4 He built his own rigs so that he could test. He
10:58:17 5 couldn't afford to buy them, so he built them. And he
6 brought one here to show you.

7 He approached tire manufacturers in 2003 with his
8 early very undeveloped but early ideas. And it was too
9 early stage, but he learned from those conversations with
10:58:37 10 tire manufacturers, he learned what he needed to go back and
11 do, and he set about doing that. That's what he quits his
12 job, he sells his car, but ultimately burns through his
13 savings, and he has to go back to work. But he keeps
14 working nights and he keeps working weekends.

10:58:52 15 He builds another test rig. And importantly, he
16 obtains funding. And so at the end of 2005, he's able to
17 quite his job, incorporate start Coda, and become an
18 official startup. But he uses his money wisely. And he
19 buys the testing -- the much high powered testing rig that
10:59:15 20 you see her on this slide. And he builds his own testing
21 system. He testified about that. The electronics that are
22 needed to take the pressure and the data measurements so
23 that when he forms these tubes and tests them, that he can
24 then experiment and tweak and learn from what he's doing.

10:59:41 25 So -- but he doesn't have access to a tire plant. So

1 he can't actually modify a tire. And what he does, is he
2 begins -- he has this idea to create what he called a flap
3 tube, and you can see it up here, or a section of one on the
4 top right corner of the slide and so the flap tube is
11:00:13 5 peristaltic tube and it's got two flaps and you put it in
6 between the tire and rim, and it closes those flaps and
7 there is a cavity left inside.

8 And the reason he's using those is because he can make
9 those. And you see the molds he brought over there in which
11:00:27 10 he makes the flap tubes. And he can make them. It allows
11 him to experiment with different shapes and kinds of tubes
12 and advance his learning.

13 So he actually files for a patent on his flat tube,
14 and now we're up to around 2007.

11:00:47 15 He submits -- he signs up to go to the SAE show.
16 That's Society of Automotive Engineers and it's in the
17 spring of 2008.

18 What he -- to display his technology. The problem is
19 his flat tube only pumps about one atmosphere. It's not
11:01:11 20 enough to inflate tires. It's pumping. The concept works.
21 But he can't get enough pressure.

22 And you may recall Mr. Hrabal's testimony that the
23 peristaltic pumping motion of the tire deformation actually
24 is forcing the flat tube out of its seat where it's supposed
11:01:28 25 to be held in between the tire and the rim.

1 So what he does, he's got this show coming up. He
2 needs to get the pumping results that he knows is there and
3 available. And so he builds his prototype.

4 He builds an extension on the rim, and an extension on
11:01:49 5 the sidewall of the tire. Because, again, in that -- and
6 that forms a groove in between. Because, Mr. Hrabal, again,
7 doesn't have the funds or access to a tire plant to actually
8 mold a tire and create a new tire.

9 So he has to test these any way that he can.

11:02:07 10 And what's significant about this is that this -- the
11 groove structure that he creates in between a tire sidewall
12 extension and a rim extension actually holds the tube in
13 place. It allows him to achieve over -- well, it's called
14 6.5 atmospheres, but the takeaway is it's enough to pump up
11:02:26 15 a commercial truck tire, and that is significant.

16 And so he publishes those results, not a specific
17 data, but publishes those results and he wins the SAE Tire
18 Technology Award in 2008.

19 So at this point Mr. Hrabal has -- oh, I'm sorry. I
11:02:52 20 left this part out. So it's not just the pump. It's the
21 valves, and these are the prototype valves that Mr. Hrabal
22 created in around the same time, 2006, '7.

23 And so at this point, Mr. Hrabal has both patents, but
24 he also has trade secrets. And now we're talking about the
11:03:11 25 beginning of 2008.

1 And that's the SAE award that I was talking about.
2 That garnered interest from General Motors. Mr.
3 Hrabal testified about that. And General Motors is
4 ultimately who pushed Mr. Hrabal toward, and Goodyear toward
11:03:35 5 Mr. Hrabal.

6 All right. So I mentioned -- well, first, Coda's
7 trade secrets are not generally known or readily
8 ascertainable. That's one of the things that you'll have to
9 decide and look at in determining whether Coda has trade
11:03:50 10 secrets. And of course, it's Coda's position that they were
11 not.

12 So let's look at some of what Goodyear pointed out to
13 you over the course of this trial.

14 On the top left is this 2007 PCT that you've heard so
11:04:03 15 much about. The 2007 PCT is directed toward this flap tube
16 that going in between the tire and the rim, in between the
17 tire and the rim.

18 The Tire Tech article on the right is an article about
19 the exact same thing. So those are not public disclosures
11:04:25 20 of a tube in a groove that is in the tire sidewall close to
21 and above the rim powered by the cyclic deformation of the
22 sidewall.

23 None of the other of Coda's public disclosures
24 are -- render its alleged trade secrets generally known. So
11:04:45 25 on the bottom left is Coda's website video that does show

1 its prototype. But, again, Coda's prototype shows pinching
2 a tube against the rim. It's a rim extension and a sidewall
3 extension.

4 That does lead Mr. Hrabal to get confirmation in his
11:05:04 5 mind that the location where the tire sidewall extension is,
6 is a location in the sidewall that would power a peristaltic
7 pump. And that it -- and that it is away from the rim.

8 So there is two other patents. On the left is another
9 patent that, once again, discloses prior art, peristaltic
11:05:31 10 pump tubes that are pinched between the tire sidewall and
11 the rim.

12 And then we have the Sheppard patent which has its
13 pump tubes in the tread.

14 Now, let's look at what Goodyear said, because in
11:05:51 15 multiple documents Goodyear characterized what Goodyear saw
16 Coda's prior art as.

17 So Goodyear -- this is from Goodyear's Department of
18 Energy application in 2011. And on the left, in the figure,
19 Goodyear has what it says is the prior art. And that's that
11:06:14 20 tube pinched between the tire and the rim.

21 And on the right is the new location which is farther
22 away from the rim.

23 And what Goodyear says about that it, says another
24 innovative feature of the AMT is that the -- sorry. That's
11:06:38 25 actually the wrong quote.

1 But that's all right because I remember it any way.

2 What it says -- and we'll get to it a little bit later
3 again in the presentation -- is that what is innovative
4 about this new location is exactly its location. And it
11:07:04 5 says in the DOE application, it says the prior art, e.g.,
6 Coda, relies on the rim as a pinch point with a tube between
7 the tire and the rim.

8 And that's not what this invention is. This invention
9 is moving the tube radially outward up into the sidewall to
11:07:24 10 avoid the issues with the rim. Because Goodyear doesn't
11 like tubes on the rim. They -- there is chafing, and then
12 Goodyear doesn't make the rim. So the rim is an X factor.
13 Other companies make rims. Goodyear make the rubber tires.
14 And rims come in different shapes and sizes and can affect
11:07:43 15 the operation of the peristaltic pump.

16 So I'm going to talk about reasonable measures now,
17 but before we get there, the next element is -- derive
18 economic value from being secret. And we'll get there when
19 we start looking at the Goodyear documents and how they used
11:08:12 20 and how they valued Coda's trade secrets.

21 But reasonable measures, we entered about numerous
22 nondisclosure agreements. Mr. Hrabal testified. They're
23 all in the record. You can look at them. Mr. Hrabal had
24 nondisclosure agreements and never spoke with anyone where
11:08:31 25 he didn't get agreements on confidentiality.

1 All right. Let's talk about misappropriation.

2 So in December of 2008, because of all this publicity
3 from Coda winning the SAE show and achieving what it
4 achieved with the prototype, the Dunlop organization within
11:08:56 5 Goodyear actually takes the Coda patented idea and does a
6 market study based on it. And it tests very high. The
7 document said it's one of the strongest concepts ever
8 tested.

9 And so the business, Dunlop, calls David Anckaert,
11:09:17 10 who's the head of Advanced Concepts, who tasks Bob Benedict
11 with looking into this technology. And Bob Benedict comes
12 back and he talks about Coda. And that's what he's asked to
13 do. And he says that Coda is at a readiness level of 4 and
14 that there has been a prototype demonstration in the lab.

11:09:37 15 At this point, Dr. Benedict, and he testified to this,
16 that prior to meeting Coda, he had never worked on a
17 peristaltic pump base air maintenance system or a
18 self-inflating tire. So he doesn't have any experience in
19 this at the time.

11:09:52 20 So based on Dr. Benedict's recommendation, the Dunlop
21 folks, and that's Alexander Vaisse, e-mail Coda and they say
22 we want to meet and we want to see your confidential
23 information. We've already looked at your public materials.
24 We want to know what we can find out beyond that.

11:10:11 25 So they sign a NDA. And what's important about that

1 is it says a recipient of confidential information disclosed
2 under this agreement shall not use the confidential
3 information except for discussing a possible cooperation in
4 the field of self-inflating tires.

11:10:32 5 So what's disclosed can only be used if they work
6 together. And otherwise it can't.

7 So let's talk about the first meeting for a second.

8 You saw the PowerPoint that was discussed at that
9 meeting. There was lots of discussion about that. Dr.
11:10:52 10 Benedict and David Anckaert were on the phone from Akron.
11 Who was in the room, as Mr. Hrabal testify, was a lot of
12 marketing people. There were a couple technical people but
13 it was mostly market folks.

14 And Mr. Hrabal concluded what he really needed to do
11:11:07 15 first is get Goodyear excited about the market opportunity.
16 So that's why over half of this PowerPoint are really about
17 the market opportunity, the advantages of the technology,
18 and the channels that you would launch it through.

19 There were, however, some questions. There was a
11:11:27 20 question -- actually over the phone from the folks in Akron,
21 about bidirectionality, can you make this bidirectional.
22 And Mr. Hrabal testified that he answered that question that
23 you could.

24 There was also some discussion of pressure management,
11:11:46 25 and some of those slides are in the presentation, as well as

1 a discussion of how bidirectional pump tubes require
2 pressure management. So you've got to have a regulator that
3 can handle rolling backwards so that the air can flow
4 backwards in the oppositely oriented pump so that pump
11:12:06 5 doesn't get destroyed when it's mounted in the opposite
6 direction.

7 And there was the discussion of removing the inner
8 liner, which is that expensive rubber that's there to try to
9 keep air from leaking out. But if you have SIT, you don't
11:12:24 10 need it.

11 So after the meeting, as asked, Mr. Hrabal follows up
12 with his testing data and results. More confidential
13 information conveyed.

14 There is also a document that's interesting after the
11:12:43 15 meeting it's what is referred to in the document as a
16 scribble, and it's pointing out that there is no know how
17 whatsoever by -- on the pressure adjusting device in
18 Goodyear.

19 There is a January 27 presentation shortly after the
11:13:01 20 meeting that shows these two puzzle pieces. And you can see
21 SIT is defined as the business opportunity, and Coda is
22 defined as the technical opportunity, and they have got them
23 together.

24 They're looking at acquiring Coda. The yellow is
11:13:22 25 Coda. The blue is Goodyear. And that would be the point to

1 get Goodyear where Coda is, and the document talks about
2 Coda being -- having a functional prototype and having this
3 readiness level around a 4 or 5.

4 But elsewhere, Dr. Benedict -- and this is his
11:13:47 5 presentation -- he, on his part of the slide, he downgrades
6 Coda to a TRL of less than 2. That's a technology readiness
7 level of less than 2.

8 So ask yourself if this makes sense.

9 And if you look at this document, Goodyear is at a 2.
11:14:08 10 So which is it? Is Coda advanced and acquire Coda
11 technology so Goodyear can catch up? Or is Coda actually
12 less advanced than Goodyear?

13 And I think you heard the testimony from David
14 Anckaert who agreed that Goodyear at this point in time had
11:14:27 15 no experience in peristaltic pump based self-inflating tire
16 technology, much less the world's first prototype of the
17 kind, or the SAE award or the prestigious Tire Tech Award
18 which Coda would win about two weeks later.

19 There it is.

11:14:46 20 Goodyear was up for this award in 2009 and Coda beat
21 Goodyear out. But somehow, according to Dr. Benedict, he's
22 representing that Coda's readiness level is somehow below
23 Goodyear's. But that didn't hold up with the witnesses on
24 the stand.

11:15:04 25 So David Anckaert then e-mails, if you feel the

1 urgency and need to secure access to Coda Development, let's
2 discuss. That's after the first meeting. And that was
3 after the Tire Tech article.

4 So what happens next? General Motors calls. They
11:15:24 5 want to do prototyping. Goodyear responds, says we're
6 interested in -- David Anckaert responds, says we are
7 interested in this technology, whether it's with Coda or
8 not.

9 Talks about two or three-way deal with GM and Coda,
11:15:41 10 and says talk to the lawyers about investment IP revenues of
11 the deal. That's what they're looking into at this point.

12 So here we are, we're at the fork in the road that we
13 talked to you about in the opening, which way is Goodyear
14 going to go?

11:15:56 15 Well, we get our answer. Shortly after that, Dr.
16 Benedict files two invention disclosures, one on the
17 bidirectionality ideas and the other on the pressure ideas
18 that were confidential from the first meeting.

19 The next thing that happens at Goodyear is there
11:16:15 20 is -- they talk about this ICP, innovation creation process.
21 Well, they do their own internal process. And it comes back
22 as a go. So now Goodyear has their own SIT development.
23 But they're double tracking because they're also pointing
24 out that Coda remains to be considered as an open innovation
11:16:37 25 partner, but they've got the legal setup to review.

1 So what happens next?

2 Consistent with starting their own internal program,
3 we start to see e-mails that there is a goal at this stage
4 to produce a physical prototype. And that's an e-mail with
11:16:55 5 Dr. Benedict.

6 And so what happens?

7 Now Dr. Benedict e-mails and says is there any
8 progress on the relationship with Coda?

9 And the next thing he does is to work on a project
11:17:12 10 development plan. And I have that right here. And the
11 project development plan is substantial. It does all the
12 things that you would do in a project development plan. It
13 has the gate reviews that you heard about, the white papers,
14 the project approach, prior art searches, and studies. And
11:17:35 15 then it has pick brains of Coda.

16 And that task is assigned to Bob Benedict.

17 And the very next task, after picking Coda's brains,
18 is generate ideas for technical solutions to meet the need
19 of the product.

11:18:01 20 There is a lot of testimony about Lynn Geiger who put
21 this document together, and Dr. Benedict admits that he is
22 mostly providing the content for this document.

23 Okay. What do we see next?

24 We see Christian Spieker reached from the Dunlop
11:18:25 25 group, reaching out to Coda to set up a new meeting, a

1 second meeting. And Dr. Benedict writes, we want to review
2 your prototype.

3 Think about that. While Dr. Benedict is working on
4 what Goodyear has now decided to do their own track, their
11:18:43 5 own internal development, and they're saying the stage, the
6 point is for Goodyear to make a prototype.

7 What do they do?

8 Dr. Benedict goes back, after deciding the next step
9 in the plan is to pick Coda's brains, to go examine Coda's
11:19:01 10 prototype. And they set up a second meeting, and Dr.
11 Benedict sends an e-mail making sure that's what he's going
12 to get to do, that he's going to get to examine Coda's
13 prototype.

14 So that meeting happens on June 15. You can see here
11:19:14 15 on the top left the pictures -- the picture that Dr.
16 Benedict took.

17 And what was discussed at that meeting, and you
18 heard -- you heard Mr. Hrabal talk about it -- and I'm not
19 going to go over everything, but the key trade secret that's
11:19:38 20 been at issue in this case, Mr. Hrabal does discuss his flap
21 tubes. He discusses those. That's what's patented.

22 And he tells Dr. Benedict, he explains the prototype.
23 He explains why he made it. He explains the development
24 that led to it. And he says, if I was the tire
11:20:03 25 manufacturer, and had the ability to make a tire any way I

1 want, I would put the tube right here. And explains, and
2 explains the leverage and compression that operates this
3 prototype with these extensions and how it would even be
4 more so inside that tire.

11:20:25 5 That's what he explains to Dr. Benedict, and that is
6 exactly what Dr. Benedict put in his invention disclosure
7 that we looked at when I first started talking to you 20
8 minutes ago.

9 Let's look at the reactions. What did Frantisek
11:20:48 10 Hrabal say when he was asked about that invention
11 disclosure? He was definitive. Is that Dr. Benedict's
12 invention? No. Whose is it? It's mine.

13 But what did Dr. Benedict say here under oath? Did
14 Mr. Hrabal ever tell you anything about pinching the
11:21:05 15 peristaltic pump tube without rim contact but rather by
16 adjust the forces in the sidewall? I don't think so. I
17 don't think so.

18 And it's not just Mr. Hrabal's word about having this
19 separate invention, that that was his idea. Later in the
11:21:27 20 summer, he sets up a meeting with MPR, that's a design firm,
21 because he wants to take his prototype to the next level.

22 And he meets with them, and this drawing is what comes
23 out. And he testifies he takes the prototype tire and he
24 goes to MPR and he goes through exactly what he went through
11:21:50 25 with Dr. Benedict.

1 And that is a tube in groove that is in the
2 sidewall -- up in the sidewall where there is cyclic
3 deformation that's close to but above the rim.

4 All right. Interestingly, the same day, a few hours
11:22:12 5 after the January 15 meeting, we see David Anckaert
6 suggesting a different description of their self-inflating
7 tire.

8 And it says when rolling tire is compressed and pumps
9 air into the tire cavity through a special passage
11:22:30 10 integrated into the tire sidewall.

11 That is a few hours after Dr. Benedict met with Mr.
12 Hrabal.

13 Okay. Benedict -- Dr. Benedict does a report, and
14 this is the first time he says let's develop this ourselves.
11:22:49 15 I don't want to work with Coda. Monitor the IP closely,
16 because Coda has thought about this, unlike Dr. Benedict,
17 and Goodyear, Coda has thought about this product for many
18 years.

19 Now, you've seen this numerous times, so I'm not going
11:23:05 20 to belabor it again. But the issue of IP conflict is
21 raised. It's raised by Goodyear management in their
22 official gate review process to decide as a company what
23 they're going to do.

24 Dr. Benedict suggests to make the best product we can,
11:23:22 25 worry about IP later. May have to negotiate later. Not

1 constrained by IP. Not right now.

2 And that's what they do. And now Dr. Benedict -- this
3 is his invention disclosure, and he's differentiating what
4 he claims is this new invention from prior art where the
11:23:44 5 tube is in between the tire and the rim.

6 What Goodyear would later characterize to the DOE as
7 Coda.

8 And Dr. Benedict admits that there is no documentation
9 between the June 15 meeting with Coda and when he comes up
11:24:04 10 with this -- and when he claims to have come up with this
11 idea.

12 He says, he sits down with Mr. Losey. In about an
13 hour they conclude, that, well, this seems like a pretty
14 good location.

11:24:18 15 There is no testing done. There is nothing. This
16 took Mr. Hrabal years to figure out. Dr. Benedict and Mr.
17 Losey can figure it out in a few minutes chatting in their
18 office.

19 But they do testing. They absolutely do testing.
11:24:35 20 They just do all of it after they claim to have invented the
21 idea.

22 But before I get to that, importantly, you may recall
23 the testimony of Mr. Losey. He was not told that Dr.
24 Benedict went to Coda. He didn't have any idea.

11:24:53 25 And then they asked Dr. Gobinath to actually go find

1 the pinching region. So they already know the answer, and
2 they know where it is, and they want Dr. Gobinath to confirm
3 it with his computer modeling.

4 And what does he do?

11:25:11 5 He comes back and he says a brand new concept that
6 utilizes the cyclic deformation of a lower sidewall GG
7 groove area slot, not only circumvents this problem but make
8 the self inch freighting concept reasonably closer to a
9 practical reality.

11:25:29 10 So he's saying this is a brand new concept, what we
11 see here on the tube on the right, farther up on the
12 sidewall. He says that's a brand new concept.

13 And if you look earlier here, he says many patent
14 disclosures on the concept of self-inflating tires advocate
11:25:46 15 the use of crushing deformation of a tube between the tire
16 and the rim. And he says reference 1. And who is he
17 talking about? Right here. Coda. He says Coda is
18 different. The Coda prior art is different.

19 This is not disclosed in the Coda 2007 PCT or in
11:26:11 20 anything else.

21 All right. So what's Dr. Benedict doing?

22 He's still thinking about licenses Coda maybe. And he
23 says in the bottom, he's got two alternatives. He calls
24 them his visions. He's got to two alternatives. One is a
11:26:26 25 nonexclusive license, but the second is an exclusive license

1 where Goodyear would license -- would license Coda's IP and
2 then would sublicense to its competitors.

3 So here we are again at the fork in the road. And
4 what happens?

11:26:50 5 Goodyear says we appreciate your interest, but we're
6 not in a position, another meeting would be premature. And
7 they hold brainstorming sessions on self-inflating tires
8 themselves and go ahead and filed for these two patents, the
9 '586 patent on the pump tube location with a tube in groove
11:27:16 10 embodiment and the '254 patent, okay.

11 So we also see here there is other evidence of
12 misappropriation on the right, the inner face. On the left
13 this is the Excaliber, you know, embedding the filament and
14 removing, that Mr. Hrabal testified about, that was the
11:27:35 15 basis of the program in Luxembourg. The tube in groove was
16 the basis of the program in Akron.

17 We have the regulator that allows bidirectional air
18 flow on the left. And on the right we have the tube in
19 groove pump location of the commercial project.

20 11:27:58 All right. Goodyear takes off. What happens next?

21 21 DOE, they get publicity, all kinds of awards, more
22 awards. Then they do focus fleet testing. So they get
23 these 1.5 million from the DOE and they have to report to
24 the DOE every year. And those reports are fairly glowing.
25 11:28:20 They have some problems, yes. They overcome them. They're

1 running focus fleets, driving a thousand miles a day. These
2 are AMT tires on the road driving down the highway next to
3 families in minivans.

4 It is significant what has to be done to get a new
11:28:37 5 tire on the road. The suggestion that this technology
6 doesn't work, never work, never will work, you heard Mr.
7 Anderson, is just not credible. It wouldn't be on the
8 roads. And you see on the right it's inflating the tires.

9 The AMT tires are not losing their pressure. NonAMT
11:29:06 10 tire are.

11 So what do we see here?

12 In 2016, the final report to the DOE, they talk about
13 the millions of miles that have been driven. They talk
14 about the project's health indicator goes to green. And now
11:29:21 15 at the bottom box with an eye towards commercialization.

16 So the technology works. It's done. All you have to
17 do is build it right, and what that means, an eye toward
18 commercialization that's now Goodyear can make this, they
19 can make it perfectly, all they have to do is make the
11:29:39 20 changes to their plants so they can produce a lot every day
21 to mass produce and keep it in the market.

22 But there's a very different impact on Coda after AMT
23 is announced. You heard the testimony about all the
24 publications that contacted Mr. Hrabal saying what's going
11:29:56 25 on? Whose technology is this?

1 And the e-mails about internal Goodyear confusion.

2 And Mr. Losey's e-mail saying stop all this discussion about
3 how we look like Coda, how much we're like Coda, we're in a
4 lawsuit, no more e-mails.

11:30:13 5 You heard about the partnerships, TVS, Apollo, that
6 were lost, where TVS and Apollo were raising concerns about
7 Goodyear. And you heard about the complete destruction of
8 Coda from Mr. Hrabal and Mr. Jackson and all the doors that
9 were closed in their face because of Goodyear being in the
11:30:36 10 market, claiming this technology as its own. Nobody had any
11 idea who owned what. But Goodyear had hundreds of patents.
12 That's what they were reporting to and touting to the DOE,
13 that they had hundreds of patents. Nobody was going to come
14 near this technology.

11:30:52 15 Okay. What happens next?

16 Goodyear abruptly shuts down AMT. So now we're in
17 2018. This is the CTO report from September 2018. And what
18 does it say? To develop a fully reliable, fully reliable
19 marketable product, an additional six months will be
11:31:19 20 required. You saw the documents. They were scheduling
21 launches, an additional six months is what they needed.

22 Interestingly, if you look on the left, this
23 presentation is dated September 7. But somebody makes a
24 change to it on apparently sometime or after September 12.
11:31:41 25 And it says after decision taken September 12 by John

1 Bellissimo to stop AMT valve stem project, all ongoing
2 activity is discontinued.

3 So how does that make sense?

4 We're six months from commercialization, and you heard
11:31:57 5 Mr. Anckaert testify ten years of work, millions of dollars,
6 I think he said 50 engineers put into this. They're six
7 months from a fully reliable marketable product and then
8 John Bellissimo shuts the program down.

9 In response to that communication, what do we see?

10 Other senior managers saying pretty clear from a VP, I
11 do not want to hear anyone from GMS working on this project.
12 If they are, want to talk to them personally.

13 Shut it down.

14 Okay. Now the engineers, they have one last
11:32:42 15 opportunity. They get to write the closeout report which
16 pulls everything together. And then what do they say?
17 Again, another six to 12 months would be needed to perfect
18 the AMT design for production ready. Upper management
19 decided not to continue. Overall the team felt it was
11:33:01 20 successful from a technical perspective.

21 So now think about Mr. Anderson coming in here and
22 telling you it never worked. It never would work. But this
23 is what the documents say. This is what the engineers
24 wrote.

11:33:17 25 Okay. And we had Mark Mineur come in, expert, 30

1 years at Goodyear, retired. Now has his own tire companies.

2 Invented run flat and made the biggest tire in the world.

3 He looked at those issues that were in the closeout
4 report and he talked about how he agreed with the Goodyear
11:33:41 5 engineers that they were within months of resolving all of
6 them and they're pretty standard issues that you approach
7 when you set up a plant to manufacture a new tire.

8 Okay. So now let's talk about damages.

9 As you have seen throughout this trial, Goodyear made
11:34:04 10 choices and choices have consequences. It chose to take
11 trade secrets that did not belong to it and build a program
12 so large, and with a patent thicket so dense that no one
13 else in the industry would dare touch it or challenge
14 Goodyear in this space.

11:34:23 15 So Mr. Hrabal, he was shut out. We just went through
16 some of that evidence. Shut out in really two ways.

17 One, he's directly shut out from his own -- what used
18 to be his own trade secrets because now they're disclosed in
19 Goodyear patents, so they're not secret anymore. They're
11:34:43 20 not trade secrets. Goodyear has them and Mr. Hrabal can't
21 license them, can't even use them.

22 And he's getting otherwise shut out because of the
23 confusion in the market and Goodyear occupying that space.

24 Goodyear's choices have consequences. And so you
11:35:08 25 heard this in the instructions. The measure of damages is

1 to determine what would have happened had Goodyear taken the
2 right path, right?

3 So what would Goodyear have paid Mr. Hrabal and Coda
4 in a license agreement? That's the question. So that's the
11:35:30 5 way the law looks at this. They call it, you know, this
6 hypothetical world, but for misappropriation. So what would
7 happen if there hadn't been misappropriation?

8 What would happen if Goodyear would have taken the
9 right path instead of the wrong path? What license would
11:35:51 10 they have agreed to?

11 And as Judge Lioi instructed, damages here is -- are
12 what's called actual loss, right? So -- and that's measured
13 by lost profits. And so what are the profits for Coda?

14 Coda doesn't make tires. It doesn't make products.
11:36:16 15 It's an R&D company. It generates technology. And it has
16 to have an industrial partner that has big tire plants.

17 So the way that works is Coda partners with a tire
18 manufacturer, and tire manufacturer pays a license for
19 Coda's technology. So Coda's lost profit here is the
11:36:39 20 licensing revenue that they should have gotten from Goodyear
21 that they didn't receive.

22 So you heard from Ms. Webster that this is determined
23 by considering what Mr. Hrabal and Goodyear would have
24 negotiated back in 2009 to partner together had that
11:36:59 25 actually happened, had Goodyear done the right thing.

1 That's what the law calls a hypothetical negotiation.

2 But this is how experts calculate damages in IP cases.

3 Now we heard a lot from Goodyear about, oh, imaginary this

4 or imaginary that. But Mr. Jarosz, Goodyear's own expert,

11:37:21 5 admitted on the stand that is how it's done. That's how he

6 does it. That's how everybody does it. That is how the law

7 calculates the damages in IP cases for actual loss and for a

8 royalty.

9 They create a hypothetical world to figure out what

10 money would have been earned if the wrongdoer had actually

11 done right and paid for the intellectual property.

12 All right. So first, let's look at the

13 evidence -- and we've seen this before so I'm going to go

14 quickly through it -- that, in fact, Goodyear would have

11:38:01 15 licensed from Coda.

16 So that's what they're talking about doing. If you

17 feel the urgency for a license, call me. At the bottom.

18 Any progress on developing a technical relationship? Yes,

19 we're interested in that technology, whether it's with Coda

20 or not. Let's review the legal terms, the investment, the

21 IP, the revenues for Coda. They're going down this road.

22 But what do they do?

23 They take Dr. Benedict's recommendation to do it

24 themselves, even though they've already looked and infected

11:38:35 25 their brains with the confidential information of Coda,

1 they're going to do it themselves. They're going to go
2 their own way. They're going to make the best product they
3 can without Coda, and they're going to worry about those
4 consequences later.

11:38:48 5 But they're still thinking about it. They're still
6 thinking about this license, and even the right licensing
7 structure.

8 So had Goodyear not misappropriated this technology,
9 the technology that Goodyear says to the DOE is what's
11:39:08 10 opening the door to the market opportunity, all the prior
11 art, including Coda's, according to Goodyear, is pinched
12 between the tire and the rim, uses the rim as a pinch point.
13 And that doesn't work. Doesn't work for tire manufacturers.

14 The rim doesn't work.

11:39:28 15 So Goodyear tells the DOE, fund our development of
16 something very different, new and innovative. And that is
17 this tube in the groove that is farther away, above the rim,
18 because you don't have all those problems with rim and the
19 chafing and the damage to the tube and how different rims
20 can impact the functioning. That opens the door to this
21 market opportunity for Goodyear. And there is only one
22 place they can get that door opening technology. And that's
23 from Coda. So if Dr. Benedict doesn't take it and claim it
24 as his own, Goodyear's only option is to license it. And
11:40:06 25 that's what they would have done.

1 So let's look about the calculation of damages then.

2 What would that license have looked like? One of the things
3 you look at is market demand. And Goodyear did a lot of
4 studies. They talked about Honda. They talked with BMW.
11:40:24 5 They put the Honda and BMW people in vehicles with AMT tires
6 and they loved it. You saw that evidence.

7 They did a study of what the market would pay, called
8 a willingness to pay. And they saw right here \$200 for a
9 steer tire, \$199 for a drive tire, and \$157 for a trailer
11:40:47 10 tire. And what they ultimately went with in their business
11 models was \$150 a tire.

12 They also looked at how customers respond. And
13 overwhelmingly customers said we will buy this.

14 And so they develop a business case using all of this
11:41:08 15 data, all of their detail market analysis, and what do they
16 expect to make in just the first five years of sales? \$411
17 million.

18 It's pretty valuable technology.

19 Now, later, in 2017, Norm Anderson who you heard from
11:41:36 20 revises that. He adds in a bunch of costs. He changes the
21 assumptions, and you heard him talk about it. He said,
22 well -- he tried to say Brian Buckham no longer stands
23 behind this \$150 number, but we showed him the e-mail from
24 Brian Buckham in 2016 confirming that he did. And he
11:42:02 25 ultimately says, well, price isn't the issue. Price was

1 fine. It's the technology. The technology never worked.

2 Well, we already looked and saw that that's not true.

3 And now we see this reduction of the business case.

4 But it's still highly profitable. Even if what Mr. Anderson
11:42:19 5 said was true and even if Mr. Anderson's reductions in this
6 second revised business case were valid -- and we would
7 submit that they're not -- it's still highly profitable.

8 They're still making \$68 million in just the first five
9 years.

10 And this is on one tire. Remember, he reduced -- he
11 is only looking at the profits from one tire.

12 And here is Goodyear's own documents where Goodyear
13 includes in the business plan licensing its competitors like
14 Bridgestone. That's what they planned to do. And they
11:42:59 15 planned to get \$25 a tire.

16 Okay. So we've talked about demand. We've talked
17 about the expected profitability. We've talked about the
18 importance of the innovation.

19 And now let's talk about what the parties expected at
11:43:21 20 the time. Both Ms. Webster and Mr. Jarosz agree you have to
21 look at what Mr. Hrabal and Goodyear would have expected in
22 their hypothetical negotiation.

23 Now, as far as Mr. Hrabal and Coda, in 2009, Mr.
24 Hrabal commissioned a study from that leading firm in the
11:43:38 25 Czech Republic, Cyrrus, who prepared an extensive analysis,

1 as Mr. Jarosz, Goodyear's expert, acknowledged.

2 And Cyrrus concluded that the expected range of
3 royalty rates was between 4 to \$8 a commercial tire and 1 to
4 \$2 for a passenger tire.

11:43:59 5 And what was the evidence of Goodyear's expectations?

6 Well, we're looking at one right now. They think they can
7 license it to their competitors for \$25 a tire, and they
8 think they're going to make, depending on who you believe,
9 the original program manager, John Kotanides, \$400 million
11:44:19 10 in the first five years, or Norm Anderson, \$68 million in
11 the first five years.

12 So Goodyear had pretty significant expectations, too.

13 Q. And the question is if you imagine if you're Goodyear
14 and you're thinking I can make somewhere in just the first
11:44:34 15 five years between 70 and \$400 million.

16 How much do you pay for the technology that unlock the
17 door to that opportunity?

18 Goodyear had high expectations. They would have paid,
19 if they had to, and if they would have done the right thing
20 and licensed, they would have paid something significant
21 because the technology opens the door to the market
22 opportunity that warrants it.

23 So Ms. Webster's royalty rates are not based on
24 speculation. She relied on the best evidence available.
25 She relied on Goodyear's evidence.

1 She relied on the Cyrrus report for the royalty rates.
2 And she concludes that the damages ranges here are 89
3 million under the low case to 246 million under the high
4 case, depending on what the royalty rates are and when the
11:45:50 5 product would have been launched appropriately.

6 And the total Coda's actual lost licensing revenue
7 from not partnering with Goodyear in this deal is between 89
8 million and 246 million.

9 So as for Mr. Jarosz is saying that the loss needs to
11:46:26 10 be apportioned among the number of trade secrets. Remember
11 his admission that what gets licensed is a bundle of rights.
12 What he once called access to a field of knowledge. That's
13 how licenses work in the real world. That's why it matters
14 that trade secrets 16 and 24 are foundational.

11:46:45 15 They are what cover that tube in that groove in that
16 optimal location, and they're what unlocked the door to the
17 market opportunity. And that's exactly what Goodyear told
18 the DOE in writing in 2011.

19 Now, remember when Goodyear said that they would worry
11:47:02 20 about the IP later?

21 Well nothing can bring back the value of Coda's trade
22 secrets. But doing justice for Mr. Hrabal and Coda to keep
23 it going as a business is possible in the form of a
24 significant damages award. To give them the licensing
11:47:21 25 revenue that they should have gotten if Goodyear would have

1 taken the right path. This is the actual loss, the lost
2 licensing revenues.

3 Goodyear not only used Mr. Hrabal's trade secrets for
4 itself, but it ensured that Mr. Hrabal and no one else would
11:47:43 5 be able to do so. Because it has the foundational patents
6 on this technology that it got using Mr. Hrabal's trade
7 secrets.

8 Now, Coda is entitled, we believe, to more than
9 compensatory damages. And that's what we just talked about.
11:48:02 10 Compensatory damages. To compensate for the actual harm,
11 the actual loss. Because the law also has I think what
12 people colloquially hear as punitive in groove damages.

13 And as the judge instructed you, a defendant can be
14 held liable for punitive damages if the misappropriation
11:48:24 15 was -- and these are the magic words -- willful and
16 malicious. It's got to be both.

17 Willful means intent, intentional. We think that's
18 absolutely covered. Malicious means, as the Judge
19 instructed you, with a conscious disregard for rights of
11:48:49 20 others.

21 And so here we're not alleging that Goodyear
22 misappropriated Coda's trade secrets, its ideas by accident.
23 We went through the evidence. Dr. Benedict doesn't have any
24 background in peristaltic pumps for self-inflating tires.
11:49:12 25 All he's really ever done is go and evaluate the Cycloid for

1 an afternoon and oversee an intern writing one paper on a
2 different kind of self-inflating tire technology.

3 He meets Coda and comes out with his first two
4 invention disclosures and immediately starts downgrading to
11:49:32 5 everybody else who will listen in Goodyear which Dr.
6 Anckaert -- I'm sorry, Mr. Anckaert, says yeah, that's not
7 true. It's not true that Coda is less advanced than
8 Goodyear.

9 Goodyear decides to do their own internal development.
10 Dr. Benedict is tasked with the plan. One of the goals to
11 make their own prototype. And what does he immediately do?

12 He says let's go meet Coda again. Actually has the
13 nerve to put in a development plan to go pick Coda's brains
14 and then the next step to get the technological solutions
11:50:11 15 internally for ourselves. That is willful and malicious,
16 and that's what he does.

17 He meets Mr. Hrabal. He learns from Mr. Hrabal
18 secrets of the prototype, what Mr. Hrabal has concluded from
19 that and determined from his extensive years of testing.
20 And then he goes off and he submits an invention disclosure
21 that that's his idea, files for patents, gets them, and he
22 is off to the races. And that is the end of Coda, because
23 they get more patents out of that and more patents out of
24 those original ones as they report to the DOE.

11:50:53 25 All the publicity, all the awards, all the confusion

1 from other third parties in the market and internal at
2 Goodyear. Who owns what? How are we different than Coda?
3 We don't know. Not even internally at Goodyear can they
4 figure it out.

11:51:11 5 And you heard Mr. MacMaster. You heard his testimony.
6 He was an advisory board member for free, uncompensated for
7 Coda. He was the chief operating officer of Yokohama North
8 America for like 20 years, head of the U.S. Rubber, which is
9 what senior Goodyear people are now. They're U.S. Rubber
11:51:33 10 Association. He is a major statesman in the tire industry.

11 And what did he say?

12 He said you would have to be crazy to invest with
13 Coda. He said if he was at Yokohama, he would kill that
14 investment given where Goodyear occupies in the marketplace.

11:51:50 15 He said that he typed in SIT into Google and he's
16 redirected to Goodyear's cite. No way is anybody going to
17 touch Coda. They're radioactive at this point.

18 So we ask that you award Mr. Hrabal and Coda
19 compensatory damages in the range of 89 million to 246
11:52:12 20 million plus punitive damages.

21 We have faith that the evidence will guide you to the
22 appropriate amount and bring justice to Mr. Hrabal and Coda.

23 So I think I'm going to reserve the rest of my time
24 for any rebuttal comments. But I'll leave you with this.

11:52:48 25 When you go back to the jury room, you get to take

1 three things with you. The facts, the law, and your common
2 sense and sense of fairness.

3 You have the ability to make this right. That is your
4 decision, and it is in your hands. Thank you.

11:53:08 5 THE COURT: Okay. Thank you, Mr. Cloern, you
6 have ten minutes remaining.

7 Members of the jury, we'll go ahead and take our very
8 brief recess. So ten minutes, and same admonition I've been
9 giving you all along applies. With that, the Court is in
11:53:28 10 recess.

11 THE DEPUTY CLERK: All rise.

12 (Jury out, 11:53 a.m.)

13 (Recess taken.)

14 (Jury in, 12:05 p.m.)

12:07:23 15 THE COURT: All right. Mr. Griffith, you may now
16 present the closing argument on behalf of Goodyear
17 defendants.

18 MR. GRIFFITH: Thank you, Your Honor.

19 May it please the Court, ladies and gentlemen of the
12:07:38 20 jury, first I want to say thank you. Everyone on our side
21 of the courtroom is grateful for the time you've spent on
22 this case and the sacrifice you've made.

23 And it is essential to our legal system to have the
24 contributions from folks like you.

12:07:58 25 I told you in my opening statement that this case was

1 a shakedown based on alleged trade secrets made up after the
2 fact. Phony secrets. The evidence proved just that. Look
3 how sketchy Coda's story is.

4 Mr. Hrabal supposedly told all these secrets to
12:08:24 5 Goodyear in two two-hour meetings back in 2009. Never
6 writes anything down. No written record of the alleged
7 trade secrets in 2009. Goodyear and Coda go their own ways.
8 Then a few years later, Mr. Hrabal gets a new active
9 investor, an investment banker with two law degrees who
12:08:46 10 starts scheming to sue Goodyear.

11 Now, the banker wasn't at the two meetings in 2009.
12 But that doesn't stop him and some lawyers from making up
13 some trade secrets that Coda supposedly passed to Goodyear
14 back then.

12:09:14 15 The alleged trade secrets. The ones that Goodyear is
16 getting sued on, were made up for the first time months
17 after this lawsuit was filed. They were written up by that
18 investment banker, not by Mr. Hrabal, and then reworded by
19 the lawyers.

20 They were made up after this lawsuit began for
21 purposes of trying to score a jackpot. The banker's words,
22 not mine.

23 That's what this case is about. That is what the
24 evidence showed. It's a fake case in search of a payday,
12:09:53 25 and you should reject it.

1 What did Goodyear and Dr. Benedict do to deserve this
2 phony lawsuit? They made the mistake of investigating the
3 possibility of a collaboration with Coda, and then decided
4 that Coda had little to offer in the way of development
12:10:12 5 assistance.

6 Goodyear engaged in its own independent development
7 program and did its own creative work, which Coda could not
8 tolerate. Coda fancies itself the inventor of SIT,
9 self-inflating tires, and does not want anyone else working
12:10:33 10 in that area without them.

11 I told you in my opening statement that there were
12 four simple truths that would prove -- that we would prove
13 and that would guide you in your deliberations in this case.

14 First, Coda did not invent self-inflating tires.

12:10:53 15 There was a lot of public information out there on the
16 subject before Coda came around.

17 Second, Coda itself made public a lot of information,
18 really a ton of information about its self-inflating tire
19 technology.

12:11:09 20 Third, Goodyear did its own independent development
21 work.

22 And fourth, Goodyear, like, everyone else who has
23 tried to make a self-inflating tire with a peristaltic pump,
24 failed to make it to market.

12:11:24 25 I want to go through these four simple truths and

1 review what the evidence showed.

2 And let's start with what was known before 2009, the
3 year in which the meetings took place. And as a prelude to
4 that, I want to remind the jury that the very first thing
12:11:46 5 that Mr. Hrabal told you when he took the stand was I am the
6 inventor of the self-inflating tire. That's what he said.

7 It wasn't true. On cross, he had to admit that he
8 wasn't even the inventor of a self-inflating tire with a
9 peristaltic pump.

12:12:10 10 And as you learned, that's the actual truth, before
11 Mr. Hrabal, others came up with self-inflating tire ideas
12 and self-inflating tire ideas using peristaltic pumps.

13 I told you about the Sheppard patent in my opening
14 statement and you learned a good bit about it over the
12:12:37 15 course of the trial. It's from 1967, more than 50 years
16 old. It's a self-inflating tire that uses two peristaltic
17 pumps, one on each side.

18 One pump works when going in one direction and the
19 other works when going in the other direction. It's
12:12:54 20 bidirectional. That's the term for it.

21 Dr. Sprague came here and explained exactly how this
22 worked and he played an animation for you so you could
23 understand what that technology is.

24 You also learned about the element patent owned by BMW
12:13:11 25 from the mid 2000's those. It's a self-inflating tire that

1 use as peristaltic pump placed in a groove. They call it a
2 duct, in either the rim or the tire sidewall.

3 Dr. Sprague also explained how this patent works. It
4 has a tube in a groove design.

12:13:30 5 Now, Coda bears the burden of proving that its alleged
6 trade secrets were not generally known or readily
7 ascertainable from earlier work like this.

8 But Coda did almost nothing to teach you about these
9 earlier patents, this earlier technology. We had to do
12:13:51 10 that.

11 Now, let's talk about some much Coda's publications.
12 Coda's counsel mentioned this one, and you've seen a lot
13 about this over the trial, the 2007 patent publication.

14 It has a lot of information in it about how to put a
12:14:09 15 peristaltic pump in a tire for self-inflating tire purposes.

16 And first off, two years before Coda's meetings with
17 Goodyear, you heard a lot about the document and how it
18 teaches that you could put a pump in the tire sidewall, in
19 the lug boss in the tire sidewall, or to be at a
12:14:43 20 separate -- they call it ancillary structure. And explained
21 in detail how you could put a pump in any of those
22 locations.

23 Then we talked about Figure 3H a good bit. And that
24 shows a circular chamber inside of ancillary structure,
12:15:05 25 sometimes called a flat tube. And it points out the 3H

1 design can be done by putting it in the tire sidewall. It's
2 right there, in the tire sidewall.

3 Mr. Hrabal agreed.

4 Now, let's play an animation that Dr. Sprague
12:15:24 5 presented to you to help visualize exactly how this works.

6 This is the ancillary structure. But you can do it as
7 a lug boss. That's the lug boss arrangement where it's
8 integral with the tire. It's part of the tire sidewall.

9 And he's going to go show a cutout, you may recall, so
12:16:00 10 you can see a cross-section and how when the tire rolls, it
11 pumps. It's near and above the rim, the pump chamber is,
12 and it's pumping.

13 Now, Mr. Hrabal agreed that this wasn't a secret
14 location, and he also agreed that it was near and above the
12:16:29 15 rim, which has big significance for the trade secrets in
16 this case, of which I heard very little in opposing
17 counsel's closing argument.

18 So Mr. Hrabal's agreed that you could put a pump, a
19 hose into that chamber, yes, so that would be a peristaltic
12:16:51 20 pump, yes. If one does that with a 3H embodiment, the lug
21 boss embodiment, do you agree that the hose in that
22 embodiment would be near and above the rim? Yes.

23 And in an area of the tire that cyclically deforms.

24 He agreed with that, that cyclically deforms here.

12:17:11 25 Refers to the location in the tire sidewall itself.

1 The lug wall is in the tire sidewall, right.

2 The lug boss is tire sidewall extension between the
3 tire and rim. It's in the sidewall.

4 It's part of the sidewall. It's clear.

12:17:24 5 We're going to come back to this when we get to the
6 trade secrets.

7 This is was part of what was known.

8 Mr. Hrabal wrote a Tire Technology article and he
9 talked about putting the tubing, creating the tubing in the
10 tire sidewall, in the tire sidewall. And it's near and
11 above the rim. That's a trade secret, an alleged trade
12 secret, and it was published by Mr. Hrabal. It's in the lug
13 boss, and they call that in this in the sidewall because the
14 lug boss is part of the sidewall.

12:18:02 15 Another publication that Mr. Hrabal had back -- he
16 filed this in 2008, it was published in August 2009, and
17 this was all about pressure management systems. It's
18 Exhibit D127, you'll have it back in the jury room with you.
19 It's full of information about pressure management systems.
20 And specifically about the items that are alleged to be
21 trade secrets here.

22 So that was the situation before Goodyear and Coda met
23 in January 2009.

24 Coda had published a lot of information about its
25 technology. People in the prior art published a lot of

1 information about peristaltic pumps in self-inflating tires.

2 There was a lot of talk it generated, and awards had
3 been won by Mr. Hrabal about self-inflating tires, and folks
4 in the industry were intrigued with this opportunity.

12:19:04 5 So Coda and Goodyear meet and they sign a NDA as
6 Coda's counsel referred to.

7 A couple of things about that. It provided that
8 things that become public were no longer subject to
9 confidential restrictions, which is common sense, right, but
12:19:21 10 that's an actual provision in the agreement. That's section
11 11. You'll be able to look that up.

12 The NDA also required that things that were disclosed
13 in writing or in tangible form had to be marked as
14 confidential. If they're not marked they're not
12:19:42 15 confidential. That's the rule under the agreement.

16 And everyone's obligations under the NDA expired on
17 January 21 -- I'm sorry, January 1, 2012.

18 Now, the January meeting in, 2009, conveniently, has a
19 very well developed good record of what was discussed and
20 what was disclosed. It's in a PowerPoint. And as Dr.
21 Coughlin admitted, it's got all the key points in it.
22 That's what you put on your PowerPoint slides, the key
23 points.

24 Now, interestingly, it discloses a good bit of
12:20:26 25 information about where to put the pump. Put it in as part

1 of the tire, rim, or in between, all viable options.

2 You can create it as part of the tire sidewall, or
3 tire wall only contains seat or separate tubing. It's a
4 tube in a groove. You could make different lengths of the
12:20:46 5 tubing, you can utilize dead space. It gives a lot of
6 information about how to do your peristaltic pump and where
7 to put it. A lot of options.

8 We have illustrations which is consistent with what we
9 have seen in the Tire Technology article and our
12:21:04 10 publications.

11 Now, Mr. Hrabal explained that what's actually in the
12 PowerPoint slide itself really isn't confidential. It's
13 what he says about it that he believes is confidential.

14 So that is a great written record of what was actually
12:21:29 15 discussed.

16 Now, there is also a further written record, and that
17 comes in with meeting minutes that Goodyear prepares.
18 Goodyear employees put together meeting minutes that are
19 longer than this, but one of the things that -- and they
12:21:52 20 track basically the PowerPoint presentation. They just
21 track the PowerPoint presentation.

22 But one of the things that Coda's counsel mentioned is
23 that they do say in here that a limitation on the Coda
24 concept is that it operates only in one direction and it
12:22:09 25 would require to add another SIT system on the second bead

1 which will operate for the other rotating direction.

2 So what does that sound like? Sheppard? Right. It's
3 the same thing as Sheppard. Two tubes on each side of the
4 tire. One is oriented one way so that operates when you're
12:22:28 5 going like this. And the other operates in the other
6 direction, in reverse.

7 I'm going to come back to that later.

8 David Anckaert and Bob Benedict testified about the
9 January meeting. The information did not strike them as
12:22:45 10 particularly confidential. But even so, even so, no one
11 disclosed the PowerPoint presentation or something such as
12 that.

13 Goodyear was still interested in the possibility of
14 collaboration with Coda. They had advertised that they were
12:23:04 15 a year away from production, production of an actual tire on
16 a production line once you start the next round of R&D.

17 So that suggests they're pretty far along
18 developmentally, and yet some of the information that came
19 in the meeting didn't seem to substantiate that. So they
12:23:27 20 didn't really know where they were precisely in terms of
21 development.

22 The next thing this year, in 2009, Coda wins another
23 award. It gives a presentation at the Hamburg conference.
24 And Goodyear gets a copy of that, receives a copy of that at
12:23:48 25 that time, or around that time. And the remarkable thing

1 about this presentation is -- and you'll be able to go
2 through it. Let me get the exhibit number for you. It's
3 D90.

4 If you go through that and compare it to the Goodyear
12:24:05 5 presentation, it's basically the same. It has the same
6 information about where to put the peristaltic pump. Part
7 of the tire sidewall or tire wall contains only seat or
8 separate tubing.

9 Same illustrations that you find in the Goodyear
12:24:23 10 presentation confirming, confirming the impression that Dr.
11 Benedict and Mr. Anckaert had about the information that was
12 disclosed to them due respect seem to be particularly
13 confidential. It looked like things they had seen in Coda
14 publications on the website and so forth.

12:24:42 15 Now, in May of 2009, Dr. Benedict is going to be doing
16 a European trip for work and he is interested in checking on
17 the prototype that Coda has. He wants to know, is it
18 a -- are they pretty close to a fully functional prototype.
19 If they are, then a development collaboration would be
20 something that would leap them ahead in the development
21 schedule. It would get them to where they don't have to go
22 through a long period of time developing a fully functional
23 prototype.

24 So they're interested in that.

12:25:32 25 They meet again in June for an hour or two. Coda

1 showed them the PowerPoint again. And showed them the
2 prototype tire and a prototype valve.

3 They were not mark confidential, which means that they
4 weren't deemed confidential under the agreement. But no
12:25:53 5 matter, Dr. Benedict, you will recall, took photos of them
6 at that meeting. And he never publicized those photos.

7 Mr. Hrabal says it was okay. There was a disagreement
8 between them as to precisely of the timing of the
9 photographs, but it doesn't really matter. It doesn't
12:26:13 10 really matter. They agreed it was okay, and the photographs
11 were never published.

12 And this is testimony from Mr. Hrabal to that effect.

13 So about the prototype, Coda's counsel said that Mr.
14 Hrabal said, pointed to something and said put the pump
12:26:46 15 there with his finger.

16 There is no record of that, but what the facts are,
17 what the cold hard record says, is that a tube in the
18 prototype was pinched between the rim extension and the tire
19 extension.

20 So that's what it actually shows. There can be no
21 debate about that.

22 And you could see that on the website. There was a
23 website video.

24 So this wasn't something that was even confidential,
12:27:28 25 how it operated.

1 Now, Dr. Benedict gets back and writes up his trip
2 report. He points out that there were no Coda facilities to
3 see, so he didn't think, based on what he had seen, that
4 there wasn't any substantial or significant helpful
12:27:54 5 development assistance that Coda could give, no functional
6 tire prototype. This is just something for testing. You
7 can't put it the on the car. It's not close to being able
8 to put on a car. No hard test data was provided. So they
9 showed the same data that you could see. You saw it on the
12:28:13 10 screen in the web site video.

11 So the recommendation that Dr. Benedict gave was to
12 monitor the public records to find out if they were getting
13 new IP, and that's a responsible thing for a responsible
14 company to do, to keep an eye on what other company's
12:28:36 15 patents are, patent applications are in a given area, you
16 can keep an eye on whether you are going to have a need for
17 a patent license or not in the future.

18 So that was the right thing to do.

19 What is absent from the record, from any record, and
12:28:59 20 including interest Coda's record, is evidence of Coda
21 placing a tube in a groove in a tire sidewall, or placing a
22 tube in a groove in a bending region, or placing a tube in a
23 groove in a compression side of the neutral axis of the
24 bending region.

12:29:16 25 And you will recall Dr. Benedict's invention, and I'm

1 going to come back to that.

2 So those are the facts. No conspiracy theories, no
3 speculation. Those are facts.

4 At the end of July, there is a gate B review to make a
12:29:34 5 decision as to whether Goodyear, Dr. Benedict as a principal
6 investigator, will go ahead to the next phase of R&D. So
7 they've just been in concept phase, and now they're going
8 to -- the question is whether they're going to move into the
9 prototype phase and experimentation phase, and they decide
12:29:55 10 to do that. They note, as you may recall, that the project
11 is a long shot. But they're going to do it.

12 Now, Coda's counsel mentioned the three invention
13 disclosures in this timeframe. And he kind of sped through
14 them. Let's take our time and go through them and see what
12:30:17 15 they actually say.

16 So the first invention disclosure was on -- this is
17 March 2009. It was on the bidirectional peristaltic pump.
18 And you may recall that what Mr. Hrabal claims as his
19 concept -- it's not clear who said it in the January
12:30:34 20 meeting, but it doesn't matter. His concept was two tubes,
21 opposite sides of the tire, arranged in -- oriented in
22 different directions, just like the Sheppard design.

23 And what Dr. Benedict came up with was using one tube
24 on one side and using two T valves, an inlet and an outlet,
12:30:59 25 to accomplish bidirectionality. That was his idea. It was

1 different from what others had done. And they're placed 180
2 degrees apart. That was his idea. It's different. There
3 is no disputing that.

4 Now -- and this is the comparison. You may recall
12:31:23 5 this from my opening statement.

6 The other design, Mr. Hrabal says is his, is two
7 pumps. The Benedict design is one pump on one side, two T
8 shaped valves 180 degrees apart.

9 There is also an invention disclosure on an adjustable
12:31:42 10 pressure regulating valve. And this related to, as Dr.
11 Benedict testified, it's kind of a cruise control design.
12 And you could pump your tire up, and then once it was at the
13 pressure level that you wanted, you could press a button.
14 It would have been a plunger on it, you could press a
12:32:05 15 button, and that would set your pressure level for your
16 self-inflating tire at that level.

17 So you pick the pressure that you wanted in that tire,
18 and then you set it by pushing the button. It's not an idea
19 that is in any of the alleged trade secrets. You're not
12:32:25 20 going to find it there. In fact, you may recall I asked Dr.
21 Coughlin about this. And Dr. Coughlin admitted there was no
22 mention of a plunger or the setting of the pressure in that
23 fashion.

24 In fact, he said this does not disclose any -- I
12:32:42 25 asked:

1 "Q. This does not disclose any trade secrets 3, 4, 20
2 or 22.

3 Those are the pressure management trade secretes.

4 He says:

12:32:52 5 "A. Specific language in here does not map on to
6 those trade secrets, but the general intent and it was
7 created then into the patent application, in my opinion did
8 disclose the trade secret in the patent application."

9 Well, there was one problem with that. You may recall
10 that no patent application was filed on that valve. That
11 Mr. Cloern told you in his opening statement that it
12 couldn't be filed because of the 2009 PCT. So no witness
13 actually analyzed that against it here.

14 However, no patent application was ever filed. It
15 does not use any of the trade secrets in 3, 4, 20, or 22.
16 Those are the pressure management trade secrets.

17 All right. Here is the third invention disclosure.
18 And this is the one about the tube in a groove in the
19 bending region. So Dr. Benedict and Bob Losey thought of
20 this in August of 2009. Late August 2009. And Coda has
21 made much of, well, they didn't do any work on this before
22 then.

23 Well, because they hadn't thought of it. This is the
24 conception of the idea. This is the first conception of
25 this idea by them. They both have substantial background in

1 finite element analysis. They both have been tire engineers
2 for a couple decades at this point in time. In fact, this
3 is a finite element analysis grid.

4 And first, they point out the prior art. What's the
12:34:41 5 prior art? It's a tube in a groove near and above the rim.
6 But it's not their invention. It's not in the bending
7 region, which we're going to get into in a moment. But
8 that's the prior art. Tube in a groove near and above the
9 rim.

10 What's their invention? They put a tube closed by
11 compression due to tire sidewall bending in the footprint.
12 That gives them freedom of placement and no rim contact. So
13 that was a potential advantage.

14 Now, did Dr. Benedict and Mr. Losey know that was
12:35:27 15 going to work at that point in time? No. They didn't know.
16 They were going to have to do experimental work to figure
17 that out. That's what inventors do. You come up with an
18 idea and then you work on it. And they did. They had Dr.
19 Gobinath do finite element analysis. But they didn't just
12:35:46 20 do that. They also did their own experimental work and they
21 started making prototypes all in the fall of 2009.

22 There was evidence presented, I believe, that they
23 didn't know at this point in early September whether they
24 were going to use a tube between the rim and the tire wall.
12:36:06 25 And they didn't know that at that point in time.

1 When they tried that, they gotten too much abrasion,
2 but is that something you can solve? Maybe. With this
3 work, they didn't know for sure, so you got to keep your
4 options open.

12:36:24 5 They file a patent on it, patent application, and they
6 explain exactly what their principle is. You may recall Dr.
7 Benedict showing the principle to you. If you bend it, and
8 your grid, your FEA grid has pinching. On one side of the
9 neutral axis you get expansion. On the other side you get
12:36:48 10 contraction. That was their principle. You had a
11 compression side and an expansion side -- extension side of
12 a neutral axis.

13 They described that in their patent application. It's
14 not a patent on tube in a groove near and above the rim.
12:37:05 15 It's not a patent on putting it there. It's a patent on a
16 particular way and how of getting a tube to be pressed shut
17 in regions of a tire that have certain stresses and strains.

18 They explain this in detail. And they explain
19 that -- this is important -- they wanted the groove to be a
12:37:37 20 maximum distance from a neutral axis. They wanted to
21 cross -- he explained that. If you would cross the neutral
22 axis, you won't get pinching. You won't get pumping. You
23 had to stay on one side of the neutral axis and be a maximum
24 distance away from it.

12:37:56 25 They explained that this if phenomenon can be achieved

1 in multiple places in the tire sidewall. Not just down by
2 the bead. So they're thinking in terms of the how, what are
3 the stresses? What are the forces going on in the tire?
4 They're not thinking put something there.

12:38:21 5 Now, what was the principle that Mr. Hrabal described
6 to you in his testimony about how he said his idea operated?
7 He said it's a scissoring effect. If you want to cut
8 something harder, you have to push your object towards the
9 axis of the scissor. Towards the axis. Okay. That's the
12:38:39 10 opposite, exactly the opposite of what Dr. Benedict and Mr.
11 Losey came up with.

12 There could not be a more clear distinction between
13 what Mr. Hrabal asserts as his idea and what Dr. Benedict
14 and Mr. Losey describe as their idea.

12:38:59 15 That's technical. And those facts can't be debated.
16 But that's technical.

17 What about -- what about the reaction from Mr. Hrabal
18 when he sees the Benedict and Losey patent application
19 because the patent application gets published?

12:39:24 20 In 2011, Mr. Hrabal and others at Coda see it. And
21 they learn about Goodyear's work on self-inflating tires
22 from news about the DOE grant, the Department of Energy
23 grant.

24 I'm sorry. This was -- before I go to that, this was
12:39:44 25 Dr. Benedict's testimony regarding how his idea was actually

1 the opposite of the scissoring effect. The opposite.

2 All right. I'm going to come back to the reaction,
3 but this was mentioned, the MPR report was mentioned in
4 opposing counsel's closing argument. And I don't know what
12:40:11 5 to say about this. This was supposedly Mr. Hrabal's -- it's
6 not written by him. But it's supposedly his concept, his
7 concept of a tube in a groove in an outward facing groove.
8 That's in his earlier patent applications, but he says this
9 is the idea.

12:40:33 10 Well, it's a big gash. It goes all the way across the
11 tire sidewall almost. It certainly crosses the neutral
12 axis. It would rip apart, crossing the neutral axis it
13 wouldn't pump. It's not the same thing that Benedict and
14 Losey had done.

12:40:50 15 I asked him. That would be a dangerous way to make a
16 tire, correct? He said I don't believe so, but I could not
17 make a judgment.

18 And they say that Dr. Benedict didn't know much about
19 SIT, self-inflating tires and how to design them. Well, I
12:41:09 20 think he knew a thing or two. I think he knew not to do a
21 design like this.

22 And if you make a tire like, it would rip open,
23 correct?

24 Could be. I don't know.

12:41:21 25 Could be, I don't know.

1 That's not anything like what Dr. Benedict came up
2 with.

3 I don't know what it is. But it's not like that.

4 And if he told a tire manufacturer to do that, they
12:41:37 5 were wrong because that tire with that design won't last.

6 All right. What was the reaction when they see the
7 Benedict and Losey patent?

8 So let's go back in time to August of 2011, because
9 their reactions say a lot of the folks at Coda.

10 We showed you Coda e-mails in evidence in which they
11 discuss their thoughts about the impact of Goodyear's patent
12 activity on Coda and its business, and given the claims in
13 this case, you would have thought that Mr. Hrabal and others
14 at Coda, upon learning of those patent applications, would
12:42:22 15 their reaction to be to scream. They've taken my trade
16 secrets. That would be what you would expect.

17 But that's not what happened. Coda never mentioned,
18 never mentioned trade secrets in its reaction to seeing
19 Goodyear's patents. There was never any reaction of, hey,
12:42:39 20 that's what I told Dr. Benedict in that meeting. I don't
21 understand that. How can that be? If you think someone has
22 published your trade secret, aren't you going -- isn't that
23 going to be your reaction?

24 Well, what do we see?

12:42:56 25 I do not think this is bad news for us. If I were

1 Goodyear and wanted our SIT, I would do exactly the same
2 thing they did now.

3 That was Ladislav Szabo who said that.

4 12:43:23 Mr. Topoli said -- looked at SIT, you know, our
5 patented protection. That's what he mentions. Their
6 patented protection. Not trade secrets, and says the ideal
7 solution if it's possible they will realize during their
8 research that bypassing our patents is disadvantageous.

9 So Mr. Topoli is looking nor a patent licensing
10 12:43:42 opportunity. That's rational. That's logical. They have a
11 big patent portfolio, and they see this. It's in the
12 self-inflating tire area. They realize it's possible that
13 what Goodyear is doing might fall within the scope of their
14 patents. They don't know. Goodyear doesn't know. Why?
15 12:44:02 Because nobody knows for sure what the product is going to
16 be at this point in time. Nobody knows. Nobody knows for
17 sure what the scope of Coda's patents is going to be at this
18 point in time. It's not clear.

19 You may recall learning that the U.S. patent that
20 12:44:19 issued from that 2007 PCT, so the PCT is just an
21 application. The patent that issued was maybe 2020 or so.
22 It was after Mr. Jackson came on board, after to 2015, and
23 it was plausible that it was 2020.

24 So it takes a long time. Nobody knows.

25 12:44:41 This is Mr. Hrabal's reaction. This patent does not

1 harm us. He also says it clearly falls under our patent.
2 This is in his communications with Richard Pivnicka who is a
3 counselor to Coda.

4 There is even more. When he says clearly fall under
12:45:11 5 our patent, he's talking about the application for the '254
6 patent, the bidirectional. He thinks that might be within
7 the scope of an earlier Coda patent. So -- and you'll be
8 able to look at this document and read through the whole
9 thing. It's Defense Exhibit 179. This is a quote from it.
12:45:32 10 He says, Goodyear works on the solution, i.e., they work for
11 us." They work for us.

12 He was looking at the possibility that Goodyear was
13 going to prove up the concept in a way that he had not been
14 able to do and that there might be a licensing opportunity
12:45:50 15 there.

16 What did Coda do after that?
17 Well, for the next three years, Coda continued to
18 pursue licensing activities, and this was communication with
19 a company called Alliacense, a licensing operation, and he
12:46:10 20 was looking at building a licensing strategy through them,
21 possibly for addressing Goodyear and getting a licensing
22 deal with them.

23 Now, the year goes on. This is 2013. And Mr. Hrabal
24 is now looking at the '586 patent, the Benedict and Losey
12:46:42 25 patent. And what is he doing?

1 He's comparing some of his earlier work against it and
2 saying I think this is the same idea.

3 And so he has a website. He has a website on here.
4 This is from 2003 to 2007. And he circles a location on the
12:47:01 5 website that says this shows the location of tire tubing.
6 If you make seat for separated tubing in tire sidewall in
7 this location, then it becomes what is described in Goodyear
8 claim 1. That's what he thought. He thought this was the
9 same location as the Goodyear. You may he recall from those
12:47:21 10 presentations he had given to Goodyear and the industry,
11 that he specifically described that you could have a seat
12 for separate tubing in the tire sidewall. And that's what
13 he's describing right here. He's describing that that, in
14 his opinion, is near and above the rim.

12:47:39 15 Now, you may recall I asked Mr. Hrabal about when he
16 created the list of trade secrets, his involvement in the
17 list of trade secrets that are actually in your jury
18 instructions, the ones that you're going to be looking at.

19 And I asked him if he wrote the list.

20 I was helped.

21 By your lawyers?

22 Yes.

23 So your lawyers and you wrote the list?

24 Yes.

12:48:18 25 Do you know who wrote the first draft?

1 I don't know who wrote the first draft.

2 Well, we find out. Enter Daniel Jackson, an
3 investment banker.

4 And you're going to find out that the long list of
12:48:40 5 trade secrets didn't exist until he came in and put them
6 together.

7 This is -- he comes in and he's interested in the
8 possibility of suing Goodyear for patent infringement. He's
9 hiring potential litigation -- or looking at potential
12:48:57 10 litigation funder and lawyers he's talking with and
11 investigating the possibility. But then he realizes and
12 says, I can't do anything now. There is no damages. They
13 haven't commercialized.

14 But he's looking at a potential jackpot. That's his
12:49:18 15 return on investment.

16 This lawsuit has been filed. There is no patent
17 infringement claim that they can bring. So they filed a
18 lawsuit in August of 2015, and in November of 2015, Mr.
19 Jackson puts together a list of potential trade secrets,
12:49:41 20 potential trade secrets. Not actual trade secrets.

21 He divides them into two different categories. There
22 are those that have some hope of arguing a degree of
23 secrecy. Some hope of arguing a degree of secrecy. But for
24 many these, the concept disclosed to Goodyear is uncertain.

12:50:04 25 The other category is almost certainly published by

1 Coda and used by Goodyear, useful for compilations.

2 Compilation theory, excuse me, was some topics of disclosure
3 as somewhat nonspecific.

4 So Dr. Jackson is the brainchild of the trade secrets
12:50:25 5 that we're looking at in this case.

6 For the second category, for the second category,
7 almost certainly published but maybe we can put them in some
8 kind of a compilation. We asked him about that. How did
9 that come about? Did you speak with Mr. Hrabal?

10 Mr. Hrabal's not an IP lawyer. He's a Czech engineer.
11 He's also -- he is the last person I would ask about our
12 compilation theory.

13 Shouldn't he be the first? He's the guy who
14 supposedly came up with the trade secret. Mr. Jackson
12:51:01 15 wasn't in the 2009 meetings. He wasn't with the company in
16 2009.

17 Shouldn't Mr. Hrabal have been the first person you
18 ask?

19 We're going to go through this chart in connection
12:51:25 20 with some of the specific trade secrets because it records
21 interesting information with respect to them. And
22 undermines that there are any real trade secrets here.

23 In fact, this chart undermines that there were any
24 trade secrets in existence in this 2009 that they were in
12:51:44 25 possession of trade secrets in 2009.

1 After all, why do you have to come up with a list of
2 potential trade secrets if you knew what your trade secrets
3 were in 2009?

4 All right. Let's start with some of the trade
12:52:02 5 secrets. I didn't see too much of those discussed with any
6 kind of focus in Coda's counsel's presentation.

7 So the first one is Coda's design, development, and
8 testing regarding the feasibility and improvements in
9 self-inflating tire technology by embedding a tube in a
12:52:26 10 groove in a sidewall to act as a peristaltic pump.

11 Now, you have in your jury instructions an instruction
12 about definiteness. So a trade secret must be definite. It
13 must be particular.

14 And one of the problems with this alleged trade secret
12:52:45 15 is that it doesn't say what the design, development, and
16 testing is. What is the testing that is described by this
17 trade secret? It's not set forth in the alleged trade
18 secret.

19 So Dr. Sprague testified that this is indefinite. You
12:53:07 20 can understand what embedding a tube in a groove in a tire
21 sidewall means, to act as a peristaltic pump. That's
22 understandable.

23 But what's the rest of this stuff, probably from the
24 lawyers is my guess, but what's that? And he testified you
12:53:25 25 don't know. It's not definite. And he's right.

1 Nobody, no witness, not one witness from the other
2 side testified to the contrary. Not one -- Dr. Coughlin
3 never opined on this. That testimony is unrebutted.

4 Now, as to embedding a tube in a groove in a tire
12:53:46 5 sidewall, that wasn't secret. How do we know that? Well,
6 going back to the 2007 PCT -- so remember 3H, the lug boss
7 embodiment has a tube and a slot. It's called a slot, in
8 the tire sidewall. It's part of the tire sidewall with a
9 hollow hose to contain the chamber in the slot. This is
12:54:19 10 called the slot.

11 Well, this is Mr. Hrabal's own words. Slot equals
12 groove. A hollow hose to contain the chamber can be put
13 into slot form by matrix 9. That's the language from the
14 2007 PCT, paren, slot equals groove.

12:54:47 15 There is no doubt about this. This one is easy.

16 Now, Coda's counsel may argue that he's asking a
17 question. This is what he's telling them, his lawyer, this
18 is actually what he's telling his lawyer. And they're going
19 to say, he's just asking a question. But there is no
12:55:02 20 question mark at the end of that. And Mr. Hrabal is the
21 engineer here.

22 Now, here is a contradiction in that.

23 So Mr. Hrabal tried to say in his cross-examination
24 that he didn't know what groove meant. So how is it then,
12:55:31 25 how is it that he could tell Goodyear to put a tube in a

1 groove in 2009 if he isn't familiar with that term?

2 That doesn't add up.

3 That's an excuse to get out of what he understood to
4 be the case which is that this is a slot, this is a groove.
12:55:54 5 This is a tube in a groove in the tire sidewall where it
6 presses and deforms is a peristaltic pump.

7 The 2007 PCT application discloses this trade secret.

8 It's not secret.

9 All right. Let me talk about trade secret 24. This
10 is also a pump location. This is what they said are
11 foundational trade secrets, the most important. That's what
12 they say.

13 So, again, we have this preamble, Coda's knowledge
14 regarding the optimal location for placement of a pump in a
12:56:31 15 tire for tire manufacturers, namely in the sidewall close to
16 and above the rim where the tire cyclically deforms in
17 response to deformation.

18 I don't know what all that preamble means about
19 knowledge. The knowledge isn't described in here. Dr.
12:56:49 20 Sprague explained that that is indefinite. Again, nobody
21 rebutted that testimony. No witness on their side said Dr.
22 Sprague was wrong. Dr. Coughlin did not address it.

23 But let's just focus on what comes after namely. So
24 they're going to say, well, all that leads up to what we
12:57:12 25 have in blue on the slide is just gobbledegook. You don't

1 have to pay attention to that.

2 So that's, you know, that's the real trade secret
3 they're going to say.

4 Well, we know, right, we know from the 2007 PCT that
12:57:26 5 putting a peristaltic pump in the sidewall close to and
6 above the rim where the tire cyclically deforms was known.
7 We've been through that.

8 This is Dr. Coughlin explaining that this is a
9 transitional -- foundational trade secret.

10 And the portion of the 2007 PCT that explains that
11 this is in the sidewall is on page 17, it says it's possible
12 to create the chamber with the extended surfaces in the tire
13 sidewall. That's Figure 3H, done in the tire sidewall.

14 Obviously near and above the rim. I mean, you can see
12:58:09 15 it. And that's why -- that's what -- same thing that you
16 see in the Tire Technology article. This is not secretive
17 information.

18 Mr. Hrabal agreed in cross-examine here. If you do
19 this 3H embodiment, it's near and above the rim, he said.
12:58:28 20 It's part of the tire sidewall. That trade secret
21 is -- that trade secret that you see there, isn't secret.
22 This is what he doesn't want to go through. They want to
23 speed through a whole bunch of documents that you don't get
24 to look at, but they don't want to look at the actual trade
12:58:49 25 secrets.

1 All right. Trade secret 1, what's that about?

2 Bidirectionality, right. That's pretty -- a system that
3 operates when the tire rotates in either direction with
4 symmetrical implementation of the pump system in the tire.

12:59:11 5 Where do we see that in? That's the Sheppard patent,
6 55 years old. You don't get to claim as a trade secret
7 things that other people came up with 55 years ago. That's
8 not what trade secret law is all about. It's real clear.

9 All right. Trade secret number 2. Also related to
10 bidirectionality. It's got -- the lawyers really went to
11 work on this, or maybe the investment banker, but this has
12 got a lot of moving parts in it and it's kind of hard to
13 tell exactly what it means.

14 Dr. Sprague opined it was indefinite. Nobody
15 challenged that. Nobody challenged that.

16 But it does say a bidirectional arrangement
17 implementing the principles of symmetry such as the example
18 of a 360-degree oppositely oriented pumps in each sidewall
19 of the tire. That's just an example. Okay?

13:00:10 20 So, again, the Sheppard patent is another example of
21 this trade secret. It's not secret.

22 This was another patent, Lindner patent that discloses
23 the same idea.

24 Trade secret 11, is they also group into this a pump
13:00:33 25 configuration.

1 And it's indefinite. It has the same confusing
2 description. I don't know exactly -- it's hard to say
3 exactly what this means. But we do know that Mr. Hrabal did
4 not testify that he told all of this to Goodyear. On the
13:00:50 5 left, on this slide, is what Mr. Hrabal said, says that he
6 said to Goodyear. And on the right we show how that's only
7 a handful of the elements of this trade secrets.

8 You have to judge, your job is to judge, did Goodyear
9 even use, let alone misappropriate, did they even use this
13:01:15 10 idea? You're allowed to come up with an idea on your own,
11 by the way. You're allowed to do that. That's not a
12 violation of someone's else's trade secrets, if you
13 independently come up with your own idea.

14 But this, they don't even identify things that
13:01:32 15 Goodyear did that is commensurate with the trade secret.

16 Trade secret number 3. That's all about using a
17 regulator with a threaded member. That's a multiple
18 syllable way of saying set screw. That's a set screw. And
19 you can adjust the space between a -- in a reference
13:01:53 20 pressure.

21 Well, the 2009 PCT allows for adjustment of the
22 pressure box. You'll be able to go through that in detail.
23 It doesn't specify in there that you can adjust it with a
24 set screw, but set screws are the most commonly known ways
13:02:13 25 to do that. And it describes that you do want to be able to

1 adjust the setting for that.

2 On Coda's website, they showed adjusting the pressure
3 setting for the self-inflating tire system using a threaded
4 member. You could see it on there. And, look, Coda didn't
13:02:35 5 invest set screws, right? I mean those go back centuries.

6 So he agreed that that was shown on his website.

7 And Dr. Sprague explained why this would have been
8 something that's readily ascertainable, readily
9 ascertainable. So it's not merely is it generally known, as
13:02:54 10 you'll see in your jury instruction, but it's also, is the
11 idea readily ascertainable. And set screws are readily
12 ascertainable.

13 This is alleged trade secret number 20. There is a
14 lack of evidence here that it was even disclosed to
13:03:11 15 Goodyear. Here is what Mr. Hrabal described disclosing to
16 Goodyear. And you can see on the right it doesn't add up to
17 all the elements in the trade secret.

18 So this was his description that he disclosed. It's
19 not the same as the trade secret.

13:03:30 20 Trade secret number 22. Dr. Coughlin agreed that that
21 was actually disclosed by the 2009 PCT. It's not secret as
22 of August 2009.

23 So that is 13 years ago.

24 And you can -- you can confirm it for yourself, the
13:03:55 25 disclosure in the 2009 PCT are ample.

1 All right. Now, here is one, alleged trade secret
2 number 5. This is what Coda's counsel referred to as
3 Excaliber. So the idea is pulling a filament that's been
4 coated with silicone from a green tire to leave a pump
13:04:19 5 chamber inside. So you mold a pump chamber into the green
6 tire. You use a filament coated with silicone to pull it
7 out.

8 Now, you may recall -- well, let's go back to the
9 Jackson chart, this one is particular interesting. The
13:04:38 10 Jackson chart identified this alleged trade secret. At the
11 time it was potential. Maybe they could call it a trade
12 secret.

13 Well, what did Mr. Jackson say about the trade secret?
14 He recorded that F.H., Frantisek Hrabal, did this at a
13:04:56 15 retread shop. He says he often told the story. He often
16 told the story. That doesn't sound like a trade secret.
17 What's more, he don't remember if it came up in the Goodyear
18 meetings. He doesn't recall.

19 And he points out further, it sounds like Frantisek
13:05:15 20 Hrabal did not try to keep it secret. So this isn't a trade
21 secret.

22 You may recall that I asked Dr. Coughlin how he even
23 could assess whether the Goodyear engineers who came up with
24 the silicone strip -- it wasn't a filament coated with
13:05:38 25 silicone. It was a sill crown strip. I asked him how he

1 could tell whether they had ever had any -- if they got the
2 idea from Coda.

3 And he had no idea. He had no idea whatsoever. It
4 was two and a half years later. They were in Europe. They
13:05:54 5 were engineers with their own engineering background.
6 He didn't know anything about them. He didn't know the
7 circumstances under which they came up with their invention,
8 which was in the patent. He had no idea whatsoever.

9 So -- and that's actually the way all of these trade
10 secrets are, all these alleged trade secrets are. There is
11 actually no evidence that Goodyear, in doing this work, in
12 whatever is accused of being a trade secret, got the idea
13 from Mr. Hrabal.

14 The big argument, the big argument there are those
15 three inventions disclosures that I talked about at the
16 outset; the bidirectional, the valve and the tube in groove
17 in bending region.

18 Well, it's pretty clear that Dr. Benedict's ideas, Mr.
19 Losey's in the case of a tube in the groove in the bending
13:06:30 20 region, got their ideas from their own. They're different
21 from what Mr. Hrabal. There is no scissor effect. They're
22 admitted in the case of the valve not to map on to the trade
23 secrets. They're different.

24 All right. So there is -- oh, the 2007 PCT is also
13:07:27 25 interesting for this alleged trade secret 5. It describes

1 that you could use a matrix, it's called, to form a chamber
2 in the green tire. And you could coat the matrix with a
3 separator. So a separator to be like silicone. You know,
4 it could be that.

13:07:45 5 So -- and then he also says in the 2007 PCT, you could
6 pull it out longitudinally. These are not trade secrets.

7 And Dr. Sprague discussed this.

8 Now, let's go to trade secret 7 which relates to the
9 interface. So the interface is a way to go from the outside
13:08:14 10 to the inside of a tire.

11 In this particular interface has about ten different
12 requirements for it. And first off, it's not clear exactly
13 what it's getting at.

14 But if you folks can sort through it and figure it
13:08:31 15 out -- Dr. Sprague explained it's indefinite. Nobody
16 challenged him. But if you folks can figure it out, what
17 you're going to find is that most of the requirements that
18 are in it are not even close to being met by the thing
19 that's been identified as the thing that's supposedly uses
13:08:55 20 the trade secret.

21 And this is why Dr. Coughlin didn't go through that
22 very carefully. This is why Coda's counsel didn't go
23 through the trade secrets in any detail. This is not a good
24 subject for them.

13:09:07 25 The investment banker's chart created after the --

1 defining the trade secrets after this litigation began, is
2 instructive on this. He said the mock-up of the interface
3 was F.H. doesn't remember discussion of this. The mockup is
4 displayed at trade shows. That's not secret. Him playing
13:09:36 5 them at trade shows isn't secret.

6 Trade secret 23. This is the test results, which is
7 one test result, 6.5 absolute atmosphere.

8 Whether it's a trade secrets or not, how does that,
9 how is that a multi-million dollars trade secret? Did
13:10:02 10 anyone -- did any witness, did Ms. Webster explain how the
11 value of this is millions of dollars?

12 But Mr. Hrabal and Coda didn't hesitate to display
13 their test results on their website. This is a screenshot
14 of the test results on the website.

13:10:23 15 The e-mail to Goodyear in which this was disclosed
16 wasn't even marked confidential. It's not a trade secret.

17 All right. Trade secret 25, and this is one that Dr.
18 Coughlin called a marketing commercialization trade secret.
19 Of course, Goodyear, as you know, never marketed and never
13:10:48 20 commercialized. So how they ever got to this alleged trade
21 secret is beyond me.

22 But the knowledge, potential tire making cost savings
23 through -- by permitting the removal and introduction of the
24 inner liner.

13:11:05 25 So what they did, they found an internal e-mail, not

1 published an internal e-mail, one, where Massimo Russo said
2 instead of improving inner liner performances, we could
3 invest in SIT technology.

4 That's it. Nothing ever happened. He doesn't even
13:11:24 5 say reduce the inner line. He doesn't say eliminate it. He
6 just says we might not have to improve it. That doesn't
7 match up with his trade secret, and my God, this is an
8 internal e-mail, once, once. That's not trade secret
9 misappropriation. That doesn't match up with this alleged
13:11:49 10 trade secret.

11 Those are some of the details I would like you folks
12 to think about when you're doing your deliberations.
13 Because that list of trade secrets is in your jury
14 instructions. And it's not easy. It's not easy, but you
13:12:07 15 are tasked with the job of going through it.

16 I don't think at that time plaintiffs helped you very
17 much in that task in explaining what these things are and
18 how you should go about that task. I think Dr. Sprague did.
19 But that's the task that you have to do.

13:12:26 20 As to damages, there are none. You don't get damages
21 on phony trade secrets and for products that never existed.
22 There were no products that were ever marketed here.

23 The thing that was six months away from production was
24 a monodirectional design that was unacceptable to business.
13:12:53 25 So they were six months away, at best, and Mr. Anderson

1 testified they were six months away ever since 2013.

2 Coda was 12 months away ever since 2008. This is the
3 nature of engineers. They're optimists. But nothing was
4 ever marketed. And the thing that had -- that plaintiffs
13:13:18 5 say had the potential for marketing was unacceptable to the
6 business much that's a fact. That's not conjecture.

7 I said in my opening that their damages theory is
8 preposterous. 89 million or whatever, for a product that's
9 never been brought to market. That's ridiculous.

13:13:43 10 But that's all I'm going to say about damages. There
11 aren't any.

12 Ladies and gentlemen of the jury, the very first
13 question on your verdict form is:

14 Has Coda proved by a preponderance of the evidence
13:14:06 15 that in January 2009 and/or June 2009, it possessed
16 specific, identifiable trade secrets that derived
17 independent economic value, actual or potential, from not
18 being generally known or readily ascertainable by proper
19 means by other persons who obtain economic value from their
13:14:29 20 disclosure?

21 First thing they have to prove is possession.

22 And as we learned, they don't really keep track of
23 their trade secrets. That's why the investment banker was
24 writing them up with the help of the lawyers after this
13:14:42 25 lawsuit was filed. They didn't exist in 2009.

1 And they certainly, as drafted, certainly, to the
2 extent you can understand them, they certainly were
3 generally known. There is no evidence that what Goodyear
4 did was done on the basis of something that Coda taught Dr.
13:15:06 5 Bob Benedict or anyone else at Goodyear. These unknown
6 people who did the silicone strip and so forth.

7 So on behalf of the defendants, the Goodyear Tire &
8 Rubber Company, Dr. Benedict, again, I want to thank you for
9 your service. I respectfully ask that you return a verdict
13:15:31 10 in favor of the defense.

11 Thank you.

12 THE COURT: Thank you, Mr. Griffith.

13 Members of the jury, why don't you stand and stretch?
14 We're just going to hear the rebuttal argument and then I'll
13:15:48 15 of give you the final instructions, so allow the attorneys
16 to switch places.

17 (Pause.)

18 THE COURT: All right. So members of the jury,
19 as I indicated, Mr. Cloern, on behalf of Coda plaintiffs,
13:16:45 20 will now have an opportunity to make what is known as a
21 rebuttal argument. And they have this opportunity because
22 the plaintiffs bear the burden of proof in this case.

23 And so with that, Mr. Cloern, you may present your
24 final closing to the jurors.

13:17:05 25 MR. CLOERN: Thank you, Your Honor.

1 What we just heard, victim blaming. That's what you
2 do when you know you're wrong and you don't have a real
3 defense. You get up and you blame the victim and you try to
4 misdirect. That's what that was. It was victim blaming
13:17:23 5 with a little bit of slight of hand on top, and I'm going to
6 quickly talk about both because I've only got ten minutes.

7 So the way trade secret cases work is you file a
8 complaint. That's the first thing you do. You have to have
9 a basis for filing that complaint. You have to understand.
13:17:46 10 You have to believe in good faith that there is a trade
11 secret.

12 After that, in discovery, there is an exchange of
13 information, and that's when you write down and you exchange
14 lists of trade secrets. Companies keep confidential
13:17:58 15 information. Mr. Hrabal testified about this. No one keeps
16 existing lists of trade secrets. Why? Look at the
17 definition of a trade secret. It's confidential
18 information. That means it's not generally known and
19 readily ascertainable, and it's got value, and you kept it
13:18:18 20 secret.

21 If you're inventing and you're an R&D shop, you're
22 creating valuable confidential information every day. You
23 don't stop to make it into some sort of list.

24 You know that valuable and confidential information
13:18:33 25 was taken. Mr. Hrabal was asked about that on the stand.

1 And he said, absolutely I knew valuable confidential
2 information was taken. He saw the '586 patent, he saw the
3 '254 patent. He says those are my inventions. Those are my
4 ideas. That was absolutely clear. He had a basis to file
13:18:51 5 the complaint.

6 And the suggestion that he didn't, why are we here
7 today, if he didn't have a basis to file the complaint? Why
8 have we litigated for seven years if he didn't have the
9 basis to file the complaint.

10 13:19:04 Don't ob you think our judicial system is maybe a
11 little bit better than that? I do.

12 Victim blaming, and misdirection.

13 Let's bring up, please, D294.

14 13:19:33 This is Mr. Jackson's chart. Goodyear doesn't just
blame Coda and Mr. Losey. They bring in the investors.
15 They blame Mr. Jackson.

16 17 This is the chart that Goodyear was so excited about.
18 Nothing in this first column, those aren't the asserted
19 trade secrets. This chart -- Mr. Jackson testified this
20 chart was an effort to make sure that no trade secret was
21 claimed in this case that was publicly disclosed or that
22 there was not a firm conviction with Mr. Hrabal that it was
23 communicated.

24 That was what the purpose of this chart was.

13:20:15 25 And in a trade secret case, the plaintiffs work with

1 the lawyers to say look at all this confidential
2 information. How are we supposed to identify it
3 particularly? Because it's just -- it is your knowledge.
4 It's the confidential information that that you haven't
13:20:32 5 disclosed.

6 That's what this chart was. Mr. Jackson explained it.
7 He came here where he lives in Prague. He flew here and
8 stood and sat if front of the jury, and he was
9 cross-examined about it. And you get to decide whether you
13:20:52 10 believe Mr. Jackson or not. This chart shows the good faith
11 of Coda.

12 Now, there is one thing I will point out.

13 Can you highlight, Mr. Montgomery, row 5?

14 The one thing in this chart that's closest to a trade
13:21:08 15 secret that remains is radially outward placement of tube in
16 groove.

17 So you start with the prior art where everything is on
18 the rim, as Goodyear said repeatedly, as Goodyear
19 characterized Coda, and you move radially. Radially means
13:21:25 20 like did you ever see the sun and it glows in every
21 direction? That's radially.

22 So you've got the center of the tire. You move the
23 tube out a little bit radially, so the radially outward
24 placement of the pump tube. And this chart says it was
13:21:39 25 absolutely communicated. The core innovation in the '586

1 patent, and no public disclosures.

2 That's what this case was based on. All right. Let's
3 move on.

4 So let's talk about this 2007 PCT and this idea that
13:22:01 5 it somehow discloses the trade secret 16 and 24.

6 Could I have the Elmo, please?

7 THE COURT: You may.

8 MR. CLOERN: This is, and I put a red flag on it,
9 something that Goodyear's counsel used in this its close
13:22:23 10 that I think actually make the point wonderfully.

11 So this is the 2007 PCT. It's actually a drawing from
12 the Tire Tech article that they relied on so much. They're
13 the same thing. They showed it to you a million times.

14 This is this thing right here called the lug boss that
13:22:48 15 they talk about. It's the same thing as an ancillary
16 structure. And it's that flat tube. They're all the same
17 thing. The flat tube goes in between the tire and the rim.
18 That's what Mr. Hrabal testified about.

19 And if you look, that's the tube between the tire and
13:23:04 20 the rim. That is in the same place.

21 And it's in the same place as right there, the prior
22 art, that Dr. Benedict says is different than what he calls
23 his inventive new location.

24 The 2007 PCT is on the rim. That's right on the rim.
13:23:23 25 I showed you the slide. I've shown you multiple

1 documents. I showed you the DOE document that talked about
2 how this innovation right here, that it's innovative
3 specifically because it's in this new location. That's what
4 Goodyear told the Department of Energy to get their grants.
13:23:51 5 And then said the prior art, and they used this location and
6 said, e.g., Coda. That's what Goodyear told the world the
7 Coda prior art, the 2007 PCT, the Tire Tech article. That's
8 what Coda is.

9 Don't -- Department of Energy, don't give Coda money.
10 Don't fund Coda because they are -- because that's what Coda
11 is. We have something new. But what they didn't tell the
12 DOE is that they took it from Coda.

13 And nowhere have you heard Goodyear explain why it is
14 that in all their documents they're calling this location
15 that's away from the rim and pinches the tube with the
16 cyclic deformation, why they're saying that's a new
17 invention and getting patents on it and getting grants on it
18 and in those very same documents distinguishing Coda as the
19 prior art that's on the rim where it's problematic, how is
20 that consistent? That's the slight of hand. They're trying
21 to trick you and say this is what the trade secrets claim.
22 But they don't explain all their past statements.

23 And the evidence, the proof that Mr. Hrabal had this
24 idea, not down on the rim, that was disclosed in his 2007
13:25:22 25 PCT. It's actually building out a corner like that to put

1 the pump in. This is higher in the sidewall.

2 It's -- that's what it means. It's above the rim. It's in
3 the sidewall itself, not in this lug boss which Mr. Hrabal
4 testified was added on.

13:25:41 5 The last thing I'll say is what you heard very little
6 about is Goodyear closing this program down. Talked about
7 it a lot in the opening, but then the evidence came in.

8 Mr. Anderson came on and you got to see Mr. Anderson
9 and how he said, oh, the tech never work. Never would work,
13:26:01 10 and that was consistent with all the documents, because they
11 don't have a good answer for why the program was closed down
12 except the July 24 gate B meeting minutes where we know in
13 2009 what Goodyear said and what Goodyear thought was we
14 have to pay when we launch a product? That's what they said
13:26:19 15 in those meeting minutes. Take the IP now. Worry about the
16 IP later.

17 Coda has thought about it for many years. That's
18 fine. Make the best product we can. Let's see if we have
19 to pay for it later. And they knew that day would come if
13:26:35 20 they launched a product.

21 So ask yourself, when they're six months from being
22 done, they spent \$30 million, and you have the market
23 opportunity, their worst case scenario was making 68
24 million. Why was that shut down? That's what you have to
13:26:54 25 answer.

1 Thank you. We appreciate the time that you've spent
2 here these last two weeks. I'm tired. I'm sure you are.
3 So I'm done.

4 THE COURT: Thank you, Mr. Cloern.

13:27:05 5 Thank you, counsel.

6 I will ask the attorneys if the exhibit are in order?
7 Mr. Cloern?

8 MR. CLOERN: As far as I know.

9 THE COURT: And Mr. Griffith.

10 MR. GRIFFITH: As far as I know, though, I have
11 to confess I'm relatively ignorant on the subject, but I'm
12 going to trust --

13 THE COURT: I'll tell you what, I'll give the
14 attorneys one last opportunity to check the exhibits before
15 we send them back to the jury room. I know that you've been
16 working hard on compiling those so we'll do that before
17 they're presented to the jurors.

18 Member of the jury, if you would turn in your
19 instructions to page 28.

20 All right. The verdict must represent the considered
21 judgment of each of you. In order to return a verdict, it
22 is necessary that each juror agree. Your verdict must be
23 unanimous.

24 It is your duty as jurors to consult with one another
25 and to deliberate with a view to reaching an agreement if

1 you can do so without disregard of individual judgment. You
2 must each decide the case for yourself, but only after an
3 impartial consideration of the evidence in the case with
4 your fellow jurors.

13:28:33 5 In the course of your deliberations, do not hesitate
6 to reexamine your own views and change your opinion if
7 convinced it is erroneous. But do not surrender your honest
8 conviction as to the weight or effect of the evidence solely
9 because of the opinion of your fellow jurors or for the mere
13:28:50 10 purpose of returning a verdict. Remember at all times that
11 you are not partizans. You are judges, judges of the facts.
12 Your sole interest is to seek the truth from the evidence in
13 this case.

14 In conducting your deliberations and returning your
13:29:05 15 verdict, there are certain rules you must follow.

16 First, when you go to the jury room, you just select
17 one of your members as your foreperson. The foreperson will
18 preside over your discussions and speak for you here in
19 court.

13:29:17 20 Second, it is your duty as jurors to discuss this case
21 with one another in the jury room and try to reach -- I'm
22 sorry. Strike that.

23 I'll start that steps again.

24 Second, it is your duty as jurors to discuss this case
13:29:35 25 with one another in the jury and try to reach agreement.

1 You should try to reach agreement if you can do so without
2 violence to individual judgment because a verdict must be
3 unanimous.

4 Each of you must make your own conscientious decision
13:29:51 5 but only after you have discussed all the evidence,
6 discussed it fully with your fellow jurors, and listened to
7 the views of your fellow jurors.

8 Do not be afraid to change your opinions if the
9 discussion persuades you that you should. But do not come
13:30:07 10 to a decision simply because other jurors think it is right
11 or simply to reach a verdict. Remember at all times that
12 you are judges of the facts. Your sole interest is to seek
13 the truth from the evidence in the case.

14 Third, if you need to communicate with me during your
13:30:22 15 deliberations, you may send a note to me through the
16 courtroom deputy signed by one or more jurors. I will
17 respond as soon as possible either in writing or orally in
18 open court. Remember that you should not tell anyone,
19 including me, how your votes stand numerically.

13:30:40 20 Fourth, your verdict must be based solely on the
21 evidence and on the law that I have given to you in my
22 instructions. The verdict must be unanimous.

23 Fifth, nothing said in these instructions and nothing
24 in any verdict form prepared for your convenience is meant
13:30:55 25 to suggest or convey in any way or manner any suggestion or

1 hint as to what verdict I think you should find. What the
2 verdict shall be is your sole and exclusive duty and
3 responsibility.

4 Finally, the verdict form is simply the written notice
13:31:12 5 of the decision that you reach in this case. You will take
6 the forms to the jury room, and when each of you has agreed
7 on the verdict, you are to sign the form of the verdict to
8 which you have agreed and advise the courtroom deputy clerk
9 that you are ready to return to the courtroom.

13:31:32 10 So I will have a final copy of the jury instructions
11 for you along with the verdict forms. And they will be
12 given to you along with the exhibits in this case. The
13 exhibits are in binders. However, if it's more convenient
14 for you, they've also been placed on a thumb drive, and we
13:31:54 15 can provide you with a thumb drive and a computer if you
16 wish to review the exhibits in that fashion.

17 With that, anything further before the jury retires to
18 deliberate?

19 Mr. Cloern?

13:32:05 20 MR. CLOERN: No, Your Honor.

21 THE COURT: Mr. Griffith?

22 MR. GRIFFITH: No, Your Honor.

23 THE COURT: All right. So, members of the jury,
24 the case is now in your hands. And you may retire to the
13:32:14 25 jury room to deliberate.

1 And with that, I'll ask the courtroom deputy clerk to
2 please escort the jurors to the jury deliberation room and
3 also deliver to them the exhibits, the final jury
4 instructions and verdict forms.

13:32:49 5 THE DEPUTY CLERK: All rise.

6 (Jury out, 1:32 p.m.)

7 THE COURT: So make sure my courtroom deputy
8 clerk has your contact number, counsel, in the event that we
9 have to reach you. And I just wish to express my
10 appreciation for your prepared negligence during the trial,
11 your diligence, the hard work that you put in this, and
12 should we receive any word from the juror or any questions,
13 you will of course be contacted.

14 (Lunch recess taken.)

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1 Afternoon Session, Friday, September 16, 2022

2 THE COURT: We are on the record in Coda
3 Development, etcetera, et al. versus the Goodyear Tire &
4 Rubber Company, et al. And the jurors have now given the
5 Court two communications. The first communication I
6 addressed with the attorneys.

7 And the attorneys, as I understand for purpose of
8 these communications, you're waiving the appearance of your
9 clients in court and you're consenting to proceed in this
0 fashion by telephone.

11 Is this correct?

12 Mr. Cloern on behalf of the Coda plaintiffs?

13 MR. CLOERN: Yes, Your Honor.

14 THE COURT: And Mr. Griffith on behalf of the
15 Goodyear defendants?

16 MR. GRIFFITH: Yes, Your Honor.

23 The second question or communication is, I'm reading
24 from the communication, "Allowed to see the PowerPoint of
25 the testimonies of Coughlin and Sprague."

1 And the Court's typewritten response is: "Jurors, you
2 have requested to see the PowerPoint presentations presented
3 during the testimony of Bryan Coughlin and James Sprague.
4 The PowerPoint presentations were used during trial to
16:21:40 5 assist you in following and understanding the evidence, but
6 they were not admitted into evidence. Therefore, the
7 PowerPoint presentations will not be given to you. You must
8 rely upon your collective memories as to the testimony of
9 Bryan Coughlin and James Sprague."

16:21:40 10 Is this satisfactory to the Coda plaintiffs?

11 MR. CLOERN: Yes, Your Honor.

12 THE COURT: Is this a satisfactory response to
13 the Goodyear defendants?

14 MR. GRIFFITH: It is, Your Honor, and I would add
16:21:40 15 for the record that we are also, the Goodyear defendants are
16 also willing to send it back. But I understand that that's
17 not the normal procedure.

18 THE COURT: Okay. And I understand that the
19 plaintiffs would prefer that those not be given to the jury.

16:21:40 20 Correct, Mr. Cloern?

21 MR. CLOERN: Correct, Your Honor.

22 THE COURT: Okay. So I will staple the response
23 to the communication and have the courtroom deputy clerk
24 give it to the jurors.

16:21:40 25 Appreciate your cooperation in working through another

1 communication with me. Take care.

2 MR. CLOERN: Thank you.

3 MR. GRIFFITH: Thanks.

4 (Recess taken.)

5 (Proceedings concluded at 5:35 p.m.)

6

7 C E R T I F I C A T E

8

9 I certify that the forgoing is a correct
10 transcript from the record of proceedings in the
11 above-entitled matter.

12

13 S/Caroline Mahnke 9/16/202

14 Caroline Mahnke, RMR, CRR, CRC Date

15

16 S/Lori A. Callahan 9/16/2022

17 Lori A. Callahan, RMR, CRR Date

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